99951-1

Court of Appeals No. 80933-4-I
(consolidating Nos. 81000-6-I, 81200-9-I, 81201-7-I & 81202-5-I)

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

Matter of the Estate of BOJILINA H. BOATMAN,

THE ESTATE OF BOJILINA H. BOATMAN,

Respondent,

v.

BRIAN BOATMAN, individually and as Trustee of the Brian Boatman Revocable Living Trust,

Petitioner,

and

BEVERLY YOUNG,

Appellant.

PETITION FOR REVIEW

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IDENTITY OF PETITIONER, CITATION TO DECISION & INTRODUCTION

This Petition arises out of a second set of appeals in this estate matter. Petitioner Brian Boatman asks this Court to review the published decision in ***Estate of Boatman***, Wash. Ct. App. No. 80933-4-I (consolidating Nos. 81000-6-I, 81200-9-I, 81201-7-I & 81202-5-I) (June 4, 2021). App. A-27-44. The appellate court granted Brian's[1] Motion to Publish on June 4, 2021. App. A-45-46.

Brian successfully defended his conduct in both the first appeal and in the costly remand trial. He incurred more than a quarter-million dollars in attorney fees. The appellate decision in ***Boatman*** gave him less than 50% of that and reduced his cost award by 90%. This leaves Brian with a judgment against an empty estate and no way to collect costs or fees without another lawsuit, while owing his sister Beverly – who lost – $48,000 in attorney fees. Brian's siblings walked away with over $80,000 each.

Boatman conflicts with ***Estate of Bernard***, 182 Wn. App. 692, 332 P.3d 480 (2014), *rev. denied*, 181 Wn.2d 1027 (2014); ***Estate of Becker***, 177 Wn.2d 242, 298 P.3d 720 (2013); TEDRA itself; and justice. This Court should grant review.

[1] We use first names solely for convenience, intending no disrespect.

ISSUES PRESENTED FOR REVIEW

1. Are PRs and beneficiaries "parties" under TEDRA (RCW 11.96A.030(5))?

2. May a trial court order *any* party to pay attorney fees and costs to the successful party under TEDRA (RCW 11.96A.150)?

3. Is $300,000 reasonable attorney fees and costs for successfully defending Brian's excellent care as his mother's attorney in fact through a trial and two appeals?

4. Do the trial court's undisputed (and unappealed) November 6, 2019 Findings contradict the appellate decision on fees and costs?

FACTS RELEVANT TO PETITION

A. Brian gave "excellent" care to his mother Bojilina, who suffered from Alzheimer's for over six years before her death, all the while making generous gifts to his siblings.

Beginning more than six years before her death in 2013, Bojilina Boatman struggled with Alzheimer's. CP 1223 (FF 13).[2] On October 3, 2005, Bojilina executed a power of attorney naming her son Brian as her attorney in fact. CP 1221 (FF 1). In August 2006, Bojilina's six children[3] suspected Bojilina was unable to continue to

[2] The facts are largely taken from the trial court's Findings and Conclusions, which were and are unchallenged on appeal. App. A-10-26 (CP 1220-36).

[3] Bojilina's children are Brian, Beverly Young, Blake Boatman, Bradley Boatman, Brent Boatman and William Boatman. CP 3-4. Brian's siblings were all the initial petitioners. CP 4.

live alone. CP 1223 (FF 13). In September 2006, Bojilina's physician informed her children that their mother was likely suffering from Alzheimer's. *Id*. They were advised that for her safety, Bojilina required constant supervision. *Id.*

From January 2007 to her death, Bojilina lived full time with Brian. CP 1224 (FF 19). On July 12, 2007, doctors formally diagnosed Bojilina with dementia and Alzheimer's disease. CP 1222 (FF 8). The written diagnosis allowed and required Brian to assume responsibility, as her power of attorney, to act on her behalf. *Id*.

Because Brian provided 24/7 care to Bojilina, his arborist business declined dramatically. CP 1225 (FF 29). Beverly was not employed and had the ability to be the caregiver without serious impact on her income. *Id*. Had Brian continued to work full time, paying caregivers 24/7, Bojilina's care would have cost her more than $700,000. CP 1228-29 (FF 41-44). Brian "had to get Bojilina up to use the bathroom at least once a night, sometimes twice. Often her bedclothes would be soiled and he would change the sheets before returning her to bed. Her bedclothes were almost always soiled in the morning requiring another change of the sheets and additional laundry." CP 1225 (FF 27).

The siblings repeatedly told Brian they were grateful for his care, which they lauded as "excellent." CP 1226-27 (FF) 34. They wrote to Brian that his care of their mother was superior to care they could provide. *Id*.; CP 1233-34 (CL 12). While "Brent and Brad testified that Brian 'complained' that he was exhausted by his caregiving responsibilities and that he had asked for help[, t]he help he received from his siblings was minimal . . .". CP 1227 (FF 34).

While Brian and Bojilina were struggling with Bojilina's Alzheimer's, Brian's siblings, including Beverly, repeatedly asked for and received loans or gifts from their mother. CP 1226-27 (FF 34), 1227 (FF 37). The gifts to the siblings ranged from $12,410 to $18,500. CP 1227 (FF 37); Ex 56. "Gifts to family members and a couple of caregivers totaled" $134,973. *Id*. The siblings repeatedly thanked Brian for his sharing of their mother's money. CP 1226-27 (FF 34), 1227 (FF 37), 1232 (CL 5); Ex 56.

During the six years Brian cared for Bojilina, Brian did not ask for or receive any financial support from his siblings. CP 1231 (FF 61). Brian's siblings never asked or demonstrated any interest in how Brian was able to pay for their mother's care. *Id.* The few times the siblings cared for Bojilina they were all paid. *Id*.

B. Brian became PR of Bojilina's Estate and distributed substantially all Estate assets to his siblings – leaving nothing for fees – but they sued him anyway.

Bojilina died on May 18, 2013. CP 2. Brian was appointed Personal Representative (PR) of her estate. *Id.* In his fiduciary capacity, Brian expedited the following transfers of probate and nonprobate assets to his siblings, including Beverly:

June 12, 2013: $5,000 to each sibling. Ex 111.

July 15, 2013: $49,747.44 to each sibling. Ex 110.

December 16, 2013: $28,000 to each sibling. Ex 111.

After the above prompt distributions of more than $490,000 to Bojilina's heirs, the siblings demanded an accounting from Brian, and Brian provided an accurate one. CP 1233 (CL 8).[4] Brian's siblings (including Beverly) nonetheless filed a TEDRA action against him on December 20, 2013. CP 4-26.

C. Brian entirely prevailed in the trial court, but the appellate decision leaves him penniless and without recourse.

The siblings' TEDRA Petition was dismissed on October 27, 2014. CP 611-17. The trial court determined that the siblings lacked

[4] "Brian *did* provide an accounting and it was one that the Petitioner's (Beverly) CPA expert, Alan Knutson, agreed accounted for her assets. He disagreed with the assignments of expenses but arrived at the same expenditures as Kris Halterman, with about a $2,700 difference."

standing to bring the TEDRA matter in their own names and also failed to provide sufficient evidence to remove Brian as PR. CP 615.

The siblings appealed. CP 618-26. The appellate court affirmed, holding that the claims the siblings asserted belonged to the Estate, so the PR must bring them. App. A-47-48, A-59-60. The appellate court required appointment of a new PR to determine whether the Estate should pursue a TEDRA action against Brian. *Id*.

On remand, Brian resigned as PR. CP 973. The trial court appointed his sister Beverly as PR. CP 975-80. She amended her and her other brothers' original TEDRA Petition to advance their prior legal claims against Brian. CP 987-1029.

After a lengthy and expensive trial, the trial court (Judge Montoya-Lewis, presiding) entered Findings of Fact and Conclusions of law entirely favoring Brian:

> Upon Bojilina's death in 2013 . . . Brian provided documentation over the ensuing months, which the children believed did not explain the depletion. Then they began this TEDRA action, which has been pending since 2013.
>
> Had Brian paid caregivers for 24-hour care at a rate of $12.50 (which, the evidence showed, is a very low rate for caregiving), care would have run about $700,000 for the years she lived with Brian until her death.
>
> Brian Boatman is the prevailing party.

> **[T]he Court finds in favor of Brian Boatman, in its entirety**.

CP 1231 (FF 64), 1228 (FF 43), 1236 (CL 25, 27) (paragraphing altered; emphasis added). Simply put, "Brian provided the vast majority of 24 hour care for Bojilina over the course of 7 years" while "Bojilina lived in his home, ate meals there, and received significant physical care and emotional support from Brian." CP 1233 (CL 10).

At this point, Brian's attorney fees for successfully defending his care of their mother exceeded $230,000, while his costs of defense exceeded $13,000.[5] No one disputed that Bojilina required 24/7 care for more than six years, exceeding 53,000 hours. *See* CP 1234-35 (CL 19). If all caregivers were paid $13.50 per hour, the reasonable value of Bojilina's care exceeded $700,000.[6] CP 1228 (FF 43, 44); 1234-35 (CL 19).

Brian believed he was entitled to reasonable compensation for his time as primary caregiver. CP 1231 (FF 61). Brian did not keep track of his time, but he did keep track of the time for all relief

[5] CP 638, 642, 656, 658-59, 1502, 1505, 1521, 1527.

[6] Brian provided the costs of residence treatment at trial, through expert John Fountaine. His testimony and exhibits were excluded as irrelevant, but not contested by Beverly. In Brian's home, with paid 24-hour care the cost would have likely exceeded $1,252,680. Ex 146. According to Fountaine, the cost of care would have likely exceeded $830,000. Ex 144.

caregivers, including his siblings. *Id.* Brian's payment of "his mortgage, utilities, groceries, [and] necessities for care of Bojilina all were required in order to provide a place for Bojilina to live with Brian." *Id.* For the six years before their mother's death, Brian's siblings were never concerned or interested in how Brian could support himself, run his sole proprietorship, and be responsible for Bojilina's care 24/7. *Id.*

Brian's siblings all received payment for their care of Bojilina and never, before her death, requested an accounting of any caregiving expenses. CP 1232 (CL 4). After Bojilina's death, the siblings demanded an accounting. CP 1232 (CL 6). Brian provided an accounting through ABC Accounting supported by years of receipts. *Id.* Brian and ABC provided 4,200 pages of documents accounting for Bojilina's assets and the payments made on her behalf. CP 1232-33 (CL 6); Ex 56.

The trial court found Brian incurred allowable costs of $12,835.97 after the first appeal. CP 1636. It awarded $111,574 in attorney's fees to Brian against the PR. CP 1637. Both sides appealed. CP 1640-71, 1698-1708, 1721-30, 2211. The appellate court awarded fees to Beverly. App. A-44.

REASONS THIS COURT SHOULD GRANT REVIEW

This Court should grant review under RAP 13.4(a), (b) & (d). The published appellate decision conflicts with the decisions in ***Estate of Becker*** and ***Estate of Bernard***, and misinterprets TEDRA, finding that Beverly was not a "party" subject to responsibility for attorney fees and costs. These are issues of substantial public interest that this Court should decide. It should grant review.

A. Contrary to *Boatman*, the decisions of this and other courts – and TEDRA itself – define Beverly as a party subject to responsibility for attorney fees and costs.

Beverly and her other brothers filed – as petitioners – the initial TEDRA Petition. CP 4. In the Amended TEDRA Petition, they pled that as beneficiaries they retained an interest in this action. CP 1013. Yet ***Boatman*** holds Beverly is not a "party" under TEDRA:

> As with the Phase I petition, it must be acknowledged that "party" has different meanings in different sections of the statutory scheme. Even if the statute could be read so broadly, in Phase II, Young was not acting in the capacity of a party but in her appointed fiduciary capacity.

App. A-35. This holding conflicts with TEDRA and precedent.

"Party" is broadly defined under RCW 11.96A.030, including more than just the petitioner or respondent. Attorney fees can be awarded from any "party to a petition." RCW 11.96A.030(1); App. A-5. "Party" includes "the personal representative [and a] . . .

beneficiary." RCW 11.96A.030(5)(c) and (e); App. A-6. The ***Boatman*** decision ignores or misunderstands the trial court's Findings and Conclusions, which no one challenged on appeal, and which are repeatedly critical of Beverly's conduct and motives. CP 1220-36 (App. A-33-36). Beverly is a party.

TEDRA's clear language says Beverly is acting in the capacity of a party, regardless of her duty as a fiduciary. ***Boatman*** gives no meaning to TEDRA's statutory scheme or language, creating uncertainty in TEDRA matters until corrected.

> Whenever possible, we give meaning to every word and phrase the legislature uses. ***Spokane County v. Dep't of Fish & Wildlife***, 192 Wn.2d 453, 458, 430 P.3d 655 (2018) ("'Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.'" (quoting ***Whatcom County v. City of Bellingham***, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996))).

Freedom Found. v. Teamsters Local 117 Segregated Fund*,* 197 Wn.2d 116, 127-28, 480 P.3d 1119 (2021). ***Boatman*** fails to do this.

Indeed, ***Boatman*** makes the same error regarding "party" that that court made in ***Becker***, 167 Wn. App. 1036, which this Court reversed. *See* ***Becker***, 177 Wn.2d at 250. TEDRA broadly defines party to include "'all persons beneficially interested in the estate or trust" *Id.* at 247 (quoting RCW 11.96A.030(6)). It specifically includes

Beverly as PR, beneficiary, and party, to both the initial and amended TEDRA Petitions. *Id*.; RCW 11.96A.030(5) & (6). Beverly's TEDRA Petitions demonstrate that she knew this. CP 4-5, 992-94, 1011-13. Any party may be subjected to a fee award under RCW 11.96A.150. *Cf. also* 177 Wn.2d at 249 (denying fee award).

Division One's own ***Estate of Bernard*** also conflicts with ***Boatman***. 182 Wn. App. 692. Under TEDRA, beneficiaries and personal representatives are parties if they "'have an interest in the subject of the particular proceeding.'" *Id.* at 724 (quoting RCW 11.96A.030(5)). Beverly cannot plead and prove her role as an interested party in her TEDRA actions, but then hide behind her "fiduciary" status on appeal: "RCW 11.96A.030(5)(c) identifies the personal representative as a 'party' who has an 'interest' in the subject of the [TEDRA] proceeding." ***Franulovich v. Spahi***, 2019 Wash. App. LEXIS 636, *6 (unpub. 2019) (cited as persuasive authority under GR 14.1).

Again, "any party" may be subjected to a fee award under RCW 11.96A.150. Nothing in that statute, nor anywhere else in TEDRA, treats "party" differently for purposes of fees. This Court should grant review to correct conflicts with precedent and TEDRA.

B. TEDRA's scope is an issue of substantial public interest this Court should determine.

TEDRA provides the trial court with broad powers to address estate disputes. ***Boatman*** inappropriately limits the equitable powers of trial courts: "The trial court's TEDRA authority derives from RCW 11.96A.020(1), (2) which provides:"

> (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:
>
> (a) All matters concerning the estates and assets . . . including matters involving nonprobate assets and powers of attorney, in accordance with this title . . .

Estate of Jones, 170 Wn. App. 594, 604, 287 P.3d 610 (2012). But ***Boatman*** fails to give effect to the letter or spirit of TEDRA:

> [U]nder traditional rules of statutory construction. "[W]e strive to ascertain the intention of the legislature by first examining a statute's plain meaning." ***G-P Gypsum Corp. v. Dep't of Revenue****,* 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (citing ***Dep't of Ecology v. Campbell & Gwinn, LLC****,* 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)).

BAC Home Loans Serv., LP v. Fulbright, 180 Wn.2d 754, 766, 328 P.3d 895 (2014). The courts' "ultimate objective is to ascertain and carry out the legislature's intent." ***Ronald Wastewater Dist. v. Olympic View Water & Sewer Dist.***, 196 Wn.2d 353, 363-64, 474 P.3d 547 (2020). Again, ***Boatman*** falls short of this objective.

Brian's fiduciarily appropriate early transfer of $413,000.00 to his siblings before they started the TEDRA action became a serious mistake thanks to ***Boatman***. Exs 110, 111. During the entire life of this TEDRA litigation, Bojilina's Estate had no assets. Presently, the Estate has no assets. Yet before the TEDRA action, Brian and Beverly had a statutory means to collect their attorney fees and costs from the beneficiaries, even after the above distributions:

> Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he or she is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. **The court may at any time prior to the decree of final distribution order him or her to return such property to the personal representative, if it is for the best interests of the estate.** The court may require the distributee to give security for such return.

RCW 11.72.002 (emphasis added).

TEDRA provides equity courts "flexibility" in resolving estate matters "expeditiously." ***Sloans v. Berry***, 189 Wn. App. 368, 374, 358 P.3d 426 (2015). "The definition of 'matter' is broad in scope." *Id.* PR Beverly could not have advanced the amended TEDRA Petition without notice to her brothers and their participation. Her amended TEDRA Petition demonstrates her knowledge of the scope

of the TEDRA statute. Beverly appeared to have in mind the broad scope of TEDRA when she pled that her other siblings were, like her, interested parties allowed to participate in the amended TEDRA action. CP 992-94, 1011-13. "[T]hose persons having an actual interest in the subject matter . . . are required to be participants in the resolution of the dispute." *See Comments to the Trust and Estate Dispute Resolution Act*, WSBA, January 28, 1999.

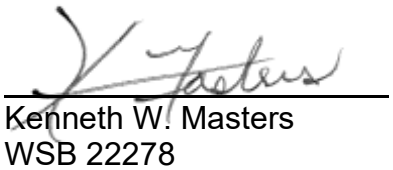
This Court should thus grant review of these significant issues. While the remedy is merely attorney fees and costs, ***Boatman***'s published holdings misinterpreting TEDRA have broad implications. Its "gotcha" result is plainly unjust.

CONCLUSION

Beverly and her brothers were parties and participants from beginning to end. Only after they lost did the siblings attempt to evade their roles in this matter. This Court should grant review to avoid the confusion ***Boatman*** will cause under TEDRA and to provide justice to Brian, whose only "mistakes" were caring for his vulnerable mother and trusting his siblings – to his great personal harm.

RESPECTFULLY SUBMITTED this 2nd day of July 2021.

MASTERS LAW GROUP, P.L.L.C.



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APPENDIX

RAP 10.3

Content of Brief

(a) Brief of Appellant or Petitioner. The brief of the appellant or petitioner should contain under appropriate headings and in the order here indicated:
(1) Title Page. A title page, which is the cover.
(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where cited.
(3) Introduction. A concise introduction. This section is optional. The introduction need not contain citations to the record for authority.
(4) Assignments of Error. A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.
(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.
(6) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.
(7) Conclusion. A short conclusion stating the precise relief sought.
(8) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief. An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c).
(b) Brief of Respondent. The brief of respondent should conform to section (a) and answer the brief of appellant or petitioner. A statement of the issues and a statement of the case need not be made if respondent is satisfied with the statement in the brief of appellant or petitioner. If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues.
(c) Reply Brief. A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed.

(d) [Reserved; see rule 10.10.]
(e) Amicus Curiae Brief. The brief of amicus curiae should conform to section (a), except assignments of error are not required and the brief should set forth a separate section regarding the identity and interest of amicus and be limited to the issues of concern to amicus. Amicus must review all briefs on file and avoid repetition of matters in other briefs.
(f) Answer to Brief of Amicus Curiae. The brief in answer to a brief of amicus curiae should be limited solely to the new matters raised in the brief of amicus curiae.
(g) Special Provision for Assignments of Error. A separate assignment of error for each instruction which a party contends was improperly given or refused must be included with reference to each instruction or proposed instruction by number. A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.
(h) Assignments of Error on Review of Certain Administrative Orders. In addition to the assignments of error required by rules 10.3(a)(4) and 10.3(g), the brief of an appellant or respondent who is challenging an administrative adjudicative order under chapter 34.05 RCW shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error.

RCW 4.84.030

Prevailing party to recover costs.

In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of the district court when commenced in the superior court.

RCW 4.84.030 – P. 1 of 1

RCW 11.72.002

Delivery of specific property to distributee before final decree.

Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he or she is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him or her to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return.

RCW 11.72.002 – P. 1 of 1

RCW 11.96A.020

General power of courts—Intent—Plenary power of the court.

(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

RCW 11.96A.030 -Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; (v) the determination of fees for a personal representative or trustee; or (vi) the powers and duties of a statutory trust advisor or directed trustee of a directed trust under *chapter 11.98A RCW;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law,

or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;
(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:
(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;
(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;
(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;
(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;
(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;
(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);
(vii) The resolution of any other matter that could affect the nonprobate asset; and
(h) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.
(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.
(4) "Notice agent" has the meanings given in RCW 11.42.010.
(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:
(a) The trustor if living;
(b) The trustee;
(c) The personal representative;
(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;
(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;
(g) A guardian ad litem;
(h) A creditor;
(i) Any other person who has an interest in the subject of the particular proceeding;
(j) The attorney general if required under RCW 11.110.120;
(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;
(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;
(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW;
(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200; and
(o) A statutory trust advisor or directed trustee of a directed trust under *chapter 11.98A RCW.
(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.
(7) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.
(8) "Trustee" means any acting and qualified trustee of the trust.

RCW 11.96A.060

Exercise of powers—Orders, writs, process, etc.

The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.

RCW 11.96A.150

Costs—Attorneys' fees. (Effective until January 1, 2022.)

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of *RCW 11.88.090(10).

IV. BRIAN WAS NOT ENTITLED TO PAY HIMSELF FOR "CARE".

The attorney-in-fact statute in effect during the period in which Brian was Bojilina's AIF, RCW Chapter 11.94, contained no provision authorizing compensation to AIF's serving under that Act.[13] Significantly, the DPOA executed by Bojilina does not authorize any such compensation.

Moreover, equitable doctrines such as promissory estoppel/part performance and/or unjust enrichment do not support a claim by Brian for compensation. Indeed, to the extent any such argument rests on alleged conduct of the Boatman Siblings, it ignores the reality that part performance or unjust enrichment could only be invoked based upon some conduct by Bojilina from which one could infer that she agreed or authorized to pay Brian himself for her care. Given Bojilina's lack of capacity at all times relevant, no such evidence has been presented and presumably no such admissible evidence exists. Significantly, Bojilina could have including such an authorization in her DPOA and elected not to do so.

Under these circumstances, it is doubtful that the Boatman siblings had the authority or standing to agree to or authorize payment from Bojilina's assets to Brian. Certainly, any such authorization would have required the unanimous approval of all the siblings, at the very least. Far from establishing any such unanimous consent, the weight of the evidence will confirm that none of the Boatman Siblings granted Brian

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[13] Moreover, in connection with Brian's Motion for Partial Summary Judgment ("Partial SJ Motion", Doc. 148), Brian cited no cases, and counsel has found none which creates a presumption in favor of AIF compensation. *See* Partial SJ Motion at pp. 6-7; Petitioner Estate of Bojilina H. Boatman's Opposition to Respondent Brian Boatman's Motion for Partial Summary Judgment ("Estate's SJ Opposition", Doc. 155) at 5-7.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

In re: The Estate of Bojilina Boatman The Estate of Bojilina Boatman v. BRIAN BOATMAN, a single person, and BRIAN BOATMAN, as the Trustee of the Brian Boatman Revocable Living Trust.	No. 13-4-00277-2 FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER AFTER TRIAL

This matter came in front of the Court for the first time in December 2013. Beverly Young, daughter of the decedent, Bojilina Boatman, along with her brothers Blake, Bradley, Brent, and William ("Bill") Boatman filed a *Petition to Establish Conversion* under TEDRA alleging conversion and breach of fiduciary duty against their brother Brian Boatman, who had served as the Attorney In Fact (AIF) for his mother, Bojilina, and, at the time of the suit, was serving as the Personal Representative for the Estate. At the time of the original filing, all of the Whatcom County Superior Court judges recused in this matter and Judge Michael Rickert from Skagit Superior Court heard motions, deciding in a *Motion for Summary Judgment* that the siblings lacked standing to bring the suit. That matter went to the Court of Appeals, Division 1, which held in an unpublished opinion, Docket No. 72642-9-L, that the beneficiaries of the Estate had no standing to pursue the claim under the TEDRA action. That opinion further held that the party who could bring such an action under TEDRA was the Personal Representative. Since the PR was Brian Boatman, the Court found a conflict of interest and remanded to the Superior Court with direction to appointment an interim PR to determine whether the Estate should pursue the claim against Brian Boatman. While the case was on appeal, this Judge came onto the Superior Court in Whatcom County and found no conflict in hearing the case, so the matter was reassigned to this Court.

Brian resigned as PR and this Court appointed attorney Lisa Saar as the interim Personal Representative. After Ms. Saar's investigation, she recommended the appointment of a new Personal Representative and believed the Petition should go forward to trial. The Court appointed Beverly Young, the daughter of Bojilina Boatman.

The trial commenced on October 9th, 2019 and ended on October 30, 2019. Brian Boatman was represented by Douglas Shepherd and Beverly Young as the Personal Representative was represented by James Britain. Below follow the Court's Findings of Fact and Conclusions of Law, as well as the Court's Order. The Court will refer to the members of the Boatman family by first names to avoid confusion; the Court means no disrespect in so doing, but finds it necessary to be sure the parties understand the Court's findings and conclusions.

FINDINGS OF FACT

1. On October 3, 2005, Bojilina Boatman executed a will and a power of attorney. In the POA, she designated Brian Boatman as her attorney-in-fact. The POA gave Brian the "power to do all things with respect to the assets and liabilities . . . as the principal could do if present and competent." As the Court of Appeals found, the POA allowed Brian to make, alter and amend or revoke Bojilina's will, trust agreements, and make gifts of any property owned by her, and to sell, transfer, convey, encumber, mortgage, lease, and purchase any property, real or personal." See COA opinion, p. 1, and Exhibit 10. This will revoked a prior will from 1998 and changed a prior POA designation.
2. The will dated October 3, 2005 made a specific gift to Ryan Boatman, son of Blake and DeLisa Boatman of $500, which was a change from the 1998 will, which made a specific gift to Ryan of $15,000. In both the 1998 will and the 2005 will, the residuary of the Estate of Bojilina Boatman was to be shared in equal shares between all her children then living at her death. Brian Boatman was appointed as Personal Representative, with Brent Boatman as the PR if Brian was unavailable or unwilling. The 1998 will had named Lee Young, Beverly's husband, as PR.
3. The POA stated it would take effect upon a written statement by a physician that Bojilina could not manage her affairs. The POA granted the AIF, Brian, the full power to provide for the support, maintenance and health of Bojilina, including providing informed consent for health care decisions.
4. The POA, Section 2, provided the AIF with the following powers, "including but not limited to the following:
    a. To make, amend, alter or revoke any of the principal's wills or codicils; and
    b. To make, amend, alter or revoke any of the principal's life insurance beneficiary designations; and
    c. To make, amend, alter, or revoke any of the principal's employee benefit plan beneficiary designations, and
    d. To make, amend, alter or revoke any of the principal's trust agreements, and
    e. To make, amend, alter or revoke any of the principal's community property agreements; and
    f. To make gifts of any property owned by the principal, and
    g. To make transfers of any of the principal's property to any trust, whether or not the principal is a beneficiary thereof.
    h. To sell, transfer, convey, encumber, mortgage, lease, and purchase, any property, real or personal.

Further, the attorney-in-fact shall have the full power to provide for the support, maintenance, health of the incompetent principal, including provide informed consent for health care decisions on the principal's behalf."

5. This POA was drafted by attorney James Doran, signed by Bojilina Boatman. That document was recorded in 2007 and the first page notes "When recorded, return to Blake Boatman." During the time of the drafting of the new will, Bojilina lived in Camano Island, but used James Doran, a Bellingham attorney, to draft the new will.
6. Exhibit 103 appears to show a note written by Bojilina Boatman on the envelope that contained the 2005 will and POA. On the outside of the envelope, in writing all the children agreed was Bojilina's writing, she wrote, "This inner work is always for my son . . . . Brian Scott Boatman . . . . I give this to Brian with much love to him. Mother Bojilina Boatman 2005." The second page of Exhibit 103 shows a hand drawn map. On that map are two names, "John and Keith" written in Bojilina's hand. The map itself is not in Bojilina's writing and is a map of Viking Village in Camano Island. DeLisa and Beverly testified that the map was written by Brian with the notes on the map showing the stores in Viking Village written in his handwriting. They did not explain how they knew Brian's handwriting. At trial, their theory was that Brian had coerced Bojilina to change her will and POA, sent her to a Bellingham lawyer (James Doran) to draft those documents, and then directed her to have those documents witnessed and notarized by a firm located in Viking Village in Snohomish County, which, in their view, explains the witness signatures which took place in Snohomish County, as shown by the attestation on the document.
7. At trial, Brian provided the Court with Exhibit 82, which is a ledger of the work he did as owner of Beaver's Tree Service. The Court compared that writing, which Brian testified was his own and showed jobs from 1988 through 2017. A close review of the writing on the map in Exhibit 103 with Brian's writing in Exhibit 82 shows marked differences in the handwriting. The letter g in Exhibit 103 shows a significant loop at the bottom of the g. The letter g, which appears on multiple pages in the ledger in Exhibit 82, shows no such loop. See, for example, page one, dated 3/6, entry of Haggins, page two, 3/18, entry of Peggy Campbell (first entry on page two). Similarly, the letter e that appears six times on Exhibit 103 is distinct from the letter e as written by Brian in Exhibit 82. While this court does not purport to be a handwriting expert, the Court is within its authority to compare two documents for obvious marks and purposes of comparison. The Court finds no evidence that would allow it to conclude that the map in Exhibit 103 was written by Brian.
8. On July 12, 2007, Bojilina's doctor, Carletta Vanderbilt diagnosed Bojilina with dementia and Alzheimer's disease and signed a written statement that she was "incompetent to make decisions affecting health or financial issues." The written statement itself was not presented at trial, but Bianca, Brian's daughter and Bojilina's granddaughter, testified to that event and accompanied Bojilina to that appointment.
9. As the Court of Appeals found, "Brian assumed responsibility as the attorney-in-fact for his mother. Brian acted as the attorney-in-fact for Bojilina from July 12, 2007 until she died on May 18, 2013. " COA opinion, p. 2.
10. All of Bojilina's children who testified during this trial testified that her illness began with some occasional forgetfulness and began to escalate when she was still living alone in her Camano Island home. She began to lose track of what her children's

birth order was, sometimes forgot their names, and began to lose track of her finances. Beginning in 2005, family members became increasingly concerned something was wrong and the siblings began discussions about how to care for Bojilina.

11. Rather than have Bojilina living on her own on Camano Island, the family agreed she should move into Bellingham to be closer to her children who lived there: Brian, Brent, Blake and Blake's wife, DeLisa. Bojilina purchased a home on Timothy Court in Bellingham on March 29, 2006 for $345,000. She sold her Camano Island home on March 27, 2006 for $420,000. The sale of the Camano Island home meant that she paid in cash for the Timothy Court home and had no mortgage on this property.
12. By all accounts, the family was very close during this time. DeLisa and Bojilina had a very close relationship. Beverly described DeLisa as a "second daughter" to Bojilina. Occasionally, Bojilina would stay overnight at Blake and DeLisa's. Brian helped with Bojilina's care and upkeep of her home as well. Beverly lived in Virginia during this time, but came for visits and remained very close to her mother.
13. Increasingly, however, the children became more and more concerned about Bojilina's ability to care for herself independently. In September 2006, the family held a meeting to discuss how to care for her as it had become increasingly apparent she could not live on her own. According to a medical chart note (Exhibit 102) in August 2006, her physician believed her to be suffering from Alzheimer's dementia. On September 22, 2006, her physician had a discussion with "her son, daughter, daughter-in-law, and granddaughter[1]. According to that chart note, the physician discussed the diagnosis with the family, counseled them about the need for supervision to ensure her safety, and advised that those needs would increase over time. They discussed where she could live and the chart note indicated that Beverly offered to have Bojilina live with her in Virginia. DeLisa and Blake also offered their home, where Bojilina already spent many nights.
14. During the family meeting, all the children were present, as well as Brian's daughter (Bojilina's granddaughter) Bianca, who was a nurse. Everyone other than Bianca testified that Bojilina was inside Brian's house while the meeting occurred outside on the deck. During that meeting, the family agreed that Bojilina would live with Blake and DeLisa. DeLisa provided a packet of information about caring for a loved one with Alzheimer's, which she gave to everyone. Exhibit 20. The family seemed to understand that taking care of Bojilina would be very difficult, but all of them were willing to be a part of her care. During that meeting, they assessed Bojilina's finances to assist in supporting her care.
15. In addition to the Timothy Court house, Bojilina owned a condo on Wintergreen Lane in Bellingham. Both properties could be rented. Blake was a real estate agent who could assist in the management of the rentals. Combined with Bojilina's social security income and the rental income from both properties, the family agreed Bojilina would have an income of about $3000 per month to support her care. Her tax returns during this time reflected that income.

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[1] This appears to have been Brian, Beverly, DeLisa, and Bianca, Brian's daughter.

16. The family also agreed that they would not consider any institutional care, like skilled nursing, assisted living, or memory care for Bojilina. Rather, they agreed that they'd use her income to support her living with family members.
17. The family agreed that Bojilina would live with Blake and DeLisa, who had a room set up for her. Blake and DeLisa had three children who lived in the home and could assist with Bojilina, but it was apparent that the main caregiver would be DeLisa.
18. Bojilina began living with Blake and DeLisa in about November of 2006. Bojilina went back and forth between Blake and DeLisa's home and Brian's. Although none of the witnesses had exact dates, in late 2006, Brian came and moved Bojilina from Blake and DeLisa's and moved her into a room in his house on Academy Road in Bellingham.
19. Though the family appears to have agreed Bojilina would live with Blake and DeLisa, it did not appear from the testimony or the exhibits that there was strong objection to Brian's moving her to his house. No one testified to any effort to return Bojilina to Blake and DeLisa's house; while they questioned it privately, no one took any action to address the move. None of the witnesses testified to there having been any family discussion about the move. According to a chart note in the medical records, Bojilina was living with Brian full time in January 2007, with occasional overnights with Blake and DeLisa. Brian had a serious pelvis injury in January 2007 and Bojilina stayed with Blake and DeLisa for a short time while Brian was in the hospital. She then returned to Brian's.
20. DeLisa often took Bojilina to her medical appointments. At a medical appointment in March 2007, the physician noted that she was living with Brian and no longer going back and forth between Blake and DeLisa's home and Brian's and that staying in one place was reducing her anxiety. The chart note states, "I think having her in one home and not shuttling back and forth is a big improvement for her."
21. In July of 2007, Bianca, Bojilina's granddaughter, took her to a medical appointment. According to the chart note and the Court of Appeals decision, the provider "provided a note for the granddaughter stating that the patient is incompetent to make decisions affecting health or financial issues." According to the Court of Appeals and this Court, that note triggered the POA and Brian became the AIF. He held that role until Bojilina's death on May 18, 2013. During that time, Bojilina lived with Brian.
22. At the time Bojilina moved in with Brian, Brian was divorced from his wife, Sandra. They had divorced in 2003, but remained friends and Sandra was around often as both of their children, Natalie and Bianca, sometimes lived in the cabin on Brian's property near the house on Academy Road where Brian lived with Bojilina.
23. When Brian got injured in 2007, Sandra began to help Brian with his care of Bojilina. During that time, Sandra and Brian reconnected and while they are not married, have had a romantic partnership ever since. Sandra testified that seeing Brian care for his mother helped her to see him in a different light and she developed feelings for him again. Since that time, Sandra cared for Bojilina with Brian, though Brian remained Bojilina's primary caregiver. Sandra moved back in with Brian and still lives with Brian.
24. Over the course of the years from 2007 through Bojilina's death in 2013, it is uncontroverted that Brian was the primary caregiver for Bojilina. He had assistance from Sandra, DeLisa, and occasionally Blake and Brent, though often Brent's wife

assisted instead of Brent. Beverly visited to give Brian the opportunity to travel and get a break from caring for Bojilina. From 2006 to 2013 (approximately 84 months), Beverly visited 11 times to provide respite for Brian, though she did not always stay at Brian's. Brad, who lived in Belgium, visited 5 times for short stays during that time period. During his visits, he stayed with Blake and DeLisa and visited Bojilina at Brian's home. Blake and DeLisa provided respite for Brian on some weekends during that time, and DeLisa was a regular presence helping Brian, particularly on Wednesdays, for a few hours. William (Bill) does not appear to have visited much during this period.

25. Brian used short stays at the Courtyard for respite for vacations and work trips. The Courtyard charged $150 per night and the care there was average. Between 2008 and mid-2010, there were about 15 Courtyard stays ranging from 3 days to 12 days. The last stay resulted in a medical emergency for Bojilina and that facility was not used again after Bojilina required surgery that resulted, in part, from care at the Courtyard.
26. Following her diagnosis, it is undisputed that Bojilina required around the clock, daily care with Activities of Daily Living (ADLs). Initially, Bojilina could feed herself and assist with ADLs but as her illness progressed, she became entirely dependent on help with all ADLs. When Bojilina was ambulatory, she had to be watched so that she would not leave the house and wander into the street. She tried to get into the refrigerator frequently, and would otherwise engage in behavior that might put her at risk. The care she required often just included sitting with her to ensure her safety, though as her Alzheimer's progressed, the care did as well.
27. Brian testified that he had to get Bojilina up to use the bathroom at least once a night, sometimes twice. Often, her bedclothes would be soiled and he would change the sheets before returning her to bed. Her bedclothes were almost always soiled in the morning requiring another change of the sheets and additional laundry.
28. Beverly and DeLisa both testified that they had always been willing to have Bojilina live with them, and stated they'd offered that to Brian. Brian did not agree that those offers had been made after the meeting in September 2006. There is some discussion early on in the medical notes that Beverly might be an option for Bojilina, but no efforts were made toward Bojilina moving there.
29. It is important to note here that had Bojilina lived with DeLisa, Blake would have been able to work full time while DeLisa provided the majority of the care to Bojilina (with reasonable respite, as any primary caregiver would need). In addition, Beverly's partner Lee was the primary income generator in her family, so Beverly had the ability to be Bojilina's primary caregiver without serious impact to her income. Brian's sole proprietorship required him actively working in the field as an arborist to generate income; when he was the primary caregiver, it meant, by definition, that no income from Beaver's Tree Service would be generated. While Sandra was available to assist, she also worked at the Waldorf school, earning a very minimal income. Bojilina and Sandra's relationship was somewhat strained, by all accounts, and Sandra as the primary caregiver was never contemplated by anyone in the family. Thus, when Bojilina lived with Brian, Brian was the primary caregiver unless he had assistance from professional caregivers or family members. Given the need for around the clock care, Brian generated very little income when caring for Bojilina.

30. As Bojilina's illness progressed, the necessity of constant care increased. While initially ambulatory, chart notes indicate she became dependent on the use of a wheelchair by mid-2009. Bojilina showed signs of increasing anxiety during that time, grinding her teeth to such an extent that her teeth were damaged. While a mouth guard was recommended, Bianca shared with Bojilina's physician that the family was fearful she would eat the mouth guard. Bojilina's bruxism worsened when around people other than close family members, but increased over time and was present even when around her family. Once Bojilina became dependent entirely on the wheelchair, lifting her in and out it became a two-person job, except for Brian. Brian was able to lift her in and out of the chair and her bed alone, though everyone else testified that no one else could do so.
31. When they testified as part of the Petitioner's case, Brad, Blake, DeLisa, and Beverly described Brian's care of Bojilina as "adequate." They testified that the room she had in Brian's home was "too small" and that he was sometimes dismissive of her and complained that he needed help and was exhausted by the care. They also testified that the bulk of caring for Bojilina involved keeping her company and holding her hand, which seemed to soothe her anxiety. Notably, they all agreed she required around the clock care, including when she was sleeping due to her need to be attended to during the overnight hours. Despite that acknowledgement, they all minimized the level of care required by Brian while Bojilina lived with him and testified that his care was basic and average.
32. That testimony is contradicted by emails written between the siblings, while Brian was the primary caregiver for Bojilina. Brad and Beverly wrote to each other often. Brad was living in Belgium during most of this period, and Beverly was living in Virginia. In an email dated April 13, 2010, Brad wrote to Beverly "[Bojilina's] daily assistance is only intensifying. Not once, but twice in the middle of the night he must attend to her needs. It's more delicate, now and help would be enormously appreciated. He feels stressed, while others are invisible. Looking ahead . . .he plans to put her house up for sale, perhaps as early as this summer. In order to afford her continuing care." [sic] The email goes on to ask others in the family to help and ends "I hope you understand this is not an attempt to play some sort of a guilt trip card, it's . . . our mother is a handful." Brad testified that Brian asked him to send this email. Ex. 124.
33. In an email dated 12/14/12 from Brad to Brian, he wrote "hope you continue with all the beautiful love you give to Mom each day." Ex. 124. In an email on 1/15/13, Brad wrote to Brian, "With appreciation for all you have sacrificed."
34. Numerous emails were read into the record, though not admitted, that showed email correspondence between Brad, Beverly, Blake, and Brian. In those emails, two things became apparent: 1) the siblings were grateful for Brian's care of their mother and lauded that care as excellent and beyond care that any of them could provide; 2) the siblings asked for loans from Bojilina's accounts, which Brian provided, in various amounts throughout the period during which Brian was AIF. Brian responded to those requests and provided money from Bojilina's accounts to Brent, Brad, and Beverly, more than once to some of them. Some of these were loans that appear to have been repaid, but many of them were gifts after requests for monies made by the siblings. See Ex. 126 "Thank you for sharing the wealth and fruits of moms money—Brent."

Email from Brent to Brian. Further, emails read into the record described Brian's care of Bojilina as the "best care imaginable" (Beverly) and expressed deep gratitude "grateful for you doing this" (Brad). There was no evidence shown to the Court that the siblings raised concerns about the quality of care Brian provided for Bojilina. In fact, all evidence was to the contrary. Brent and Brad testified that Brian "complained" that he was exhausted by his caregiving responsibilities and that he had asked for help. The help he received from his siblings was minimal and inconsistent, with the exception of DeLisa, who remained steadfast in her support and care for Bojilina.

35. During the course of Bojilina living with Brian, none of the Boatman children raised concerns about Bojilina's care, other than the concerns all agreed upon with regard to care at the Courtyard. Beverly and DeLisa both testified that they would have taken Bojilina to live with them, though neither of them acknowledged that Bojilina's medical provider recommended that Bojilina stay in a home that was familiar to her and to avoid moving her from place to place. Initially, Beverly suggested moving Bojilina to her home in Virginia, but that does not appear to have been raised again in any serious manner as Bojilina's illness progressed. DeLisa and Blake testified they would have been glad to have Bojilina live with them, though neither undertook any actions toward making that happen.
36. During the course of Bojilina's life from 2007 to her death, all of the siblings received gifts from Bojilina through Brian. As both the ABC Accounting (Exhibit 56) and Alan Knutson, CPA accountings show, the siblings received approximately equal gifts from Bojilina. While every one of them testified that Bojilina did not routinely give gifts of any monetary value (a Bible for getting married, a $50 check for a 50th birthday), all of the children and Bojilina's grandchildren cashed the checks sent to them by Brian written on Bojilina's accounts. Absolutely no evidence was presented to this Court that any child or grandchild questioned the gifts or noted, until trial, that this pattern of gift giving departed from Bojilina's very limited gift giving prior to the onset of Alzheimer's.
37. Exhibit 56 shows gifts to the children that ranged from a total of $12,410 (to Brent), about $15,000 (to Blake) to about $17,000 (to Beverly and Bill) to about $18,000 (to Brad and Brian). Gifts to grandchildren ranged from $250 to $2500 (to Bianca). In addition, there were gifts to DeLisa in the amount of $3,250 and Sandra in the amount of $3750.00. These are all listed as gifts in the ABC accounting. Kris Halterman is the owner of ABC's of Bookkeeping and she testified that she created the Profit and Loss and accounting of Bojilina's finances based upon Brian's documentations. Much of the expenditures were supported by hundreds of receipts, which were submitted into evidence. Gifts to family members and a couple of caregivers totaled $134,973.00.
38. Exhibit 56 also has a category titled "Mom's Care," which Ms. Halterman testified was her categorization to track the payments Brian made to caregivers. Caregivers range from professional caregivers (Courtyard, Anna Thomas, and Charlene Parker) to Bojilina's children and grandchildren and including her daughters-in-law DeLisa and Sandra. The total Brian paid for caregiver care, from 2007 to her death in 2013 totaled $140,083.00. Brian testified he attempted to pay caregivers between $12 to $15 per hour of care. If caregivers were engaged in active care like assisting with

Bojilina's laundry, cooking/feeding, and bathing, he tried to pay them $15. If they were sitting with Bojilina and ensuring that she did not leave the home and was kept company, he paid them $12.

39. Charlene Parker, a home health care nurse's aide, testified that care of Bojilina was involved and difficult. She testified that Bojilina could be difficult to care for and that she always had her husband with her in case she needed assistance with Bojilina. She testified that the only person who could lift Bojilina alone was Brian, which was supported by testimony of some of Brian's siblings. Brian paid her bonuses during the years she cared for Bojilina, in the hopes that he could continue having her assistance.
40. In about 1988, Brian started his business, Beaver's Tree Service. This company has been a sole proprietorship. In this business, Brian felled trees that posed threats to houses, trimmed branches, and otherwise engaged in the work of an arborist, primarily running this business in Whatcom County. From 1998 to 2007, Brian's ledger (Exhibit 82) shows he did about 150 jobs per year, with a range of prices for his services. It is uncontroverted that he was often paid in cash and it is not clear to this Court that these cash transactions were reported on his business taxes. In the dissolution documents, exhibits 72, 73, and 74, Sandra noted that Brian often conducted his business in cash and that she was unaware of his annual income and whether he tracked those cash transactions.
41. The ledger, however, shows how often he worked since 1998 and it shows a dramatic decline in work from 2007 through Bojilina's death in 2013. In 2013, the ledger shows 5 jobs. In 2011, he did 18 jobs, in 2012, he did 5. After Bojilina's death, he has begun to take on more jobs each year, though the ledger shows he has not taken on as much work as he had in years prior, though the Court heard no evidence as to why.
42. The work Brian did required him to be outside, up in trees, and would make him unavailable to be with Bojilina. Had he continued his work at the rate he had prior to Bojilina moving in with him, he would have had to pay for care for each day, given her need for 24 hour supervision. DeLisa provided some care, as did Sandra, but Beverly lived across the country, Blake was a very busy real estate agent, Brent provided little to no care, Brad lived in Belgium, and Bill was in California and rarely visited. Given that Bojilina needed around the clock care and lived with Brian, it was Brian's job to supervise her, which led to a dramatic decrease in his Beaver's Tree Service business, which was evident in his tax returns, which were admitted into evidence.
43. Had Brian paid caregivers for 24-hour care at a rate of $12.50 (which, the evidence showed, is very low rate for caregiving), care would have run about $700,000 for the years she lived with Brian until her death. The Court struck the testimony of John Fountaine, the Respondent's witness, who testified about the cost of out of home care. Out of home care was never contemplated by Bojilina's family. However, Charlene Parker and Bianca Gordon testified to the rate a caregiver would be paid for care of an Alzheimer's patient and $12.50 an hour is very low in the current marketplace.
44. Brian did not pay caregivers for that amount of time, as he provided the vast majority of 24-hour care. While he indeed took vacations and respite through his canoeing, Bojilina's medical providers recommended and encouraged those breaks and noted

breaks would be critical to Brian's ability to provide care. And, each time he took vacations or respite, he paid those caregivers.

45. The ABC accounting showed payments to caregivers but, crucially, show no such payments to Brian for his care of Bojilina. While Brian kept records of who provided care for Bojilina on a series of calendars (Exhibit 57), those calendars do not show *his* hours of care, presumably because when no one is listed as caring for Bojilina, Brian provided that care.
46. The records Brian provided are handwritten notations on calendars. See Exhibit 57. Brian testified that initially, he was inconsistent about writing down hours worked during that time. Beginning about August 2007, the notations in the calendar become more consistent, with names and hours worked appearing on the calendar. With the apparent exception of Anna Thomas, no one submitted invoices for hours worked, including Charlene Parker, who was a professional in-home aide. Additionally, Brian was inconsistent in how he paid for those hours worked. DeLisa, Beverly, and others testified that they would get checks from Brian, but not immediately after hours worked or on any predictable basis. The checks were often lump sums, rather than checks paid out on a per-pay period basis. They stated they did not calculate the hours worked against any hourly rate. They all described those checks as "money for helping with Bojilina," but did not describe any discussion with Brian about hours worked or rates they would expect to be paid for those hours worked. In each and every instance, those who received checks from Brian written on Bojilina's accounts were cashed. Based upon the testimony from those witnesses, almost all of them did not claim that income on any tax return (except for Charlene Parker, who stated she did). Testimony showed that Beverly asked that some of those checks be marked as "gifts" so she did not need to claim them as income, although there was no evidence presented at trial that Beverly ever claimed any of the money Brian paid her as income.
47. Brian never paid himself directly by calculating hours and multiplying those hours against an hourly rate. Bank records show transfers of money from Bojilina's accounts into his accounts, but do not show up as payments for caregiving. He did not track his own hours for caregiving on the calendar in Exhibit 57.
48. Brian did pay Sandra for the hours she worked as a caregiver to Bojilina. As Exhibit 56 shows, she was paid substantially more than any of the other caregivers. Sandra was paid $66,735.00; the next highest paid caregiver was DeLisa, who was paid $26,725.00. All told, caregivers were paid $140,083.00 over the time Bojilina lived with Brian.
49. When Bojilina came to live with Brian, she had an income of approximately $30,000 per year, from both Social Security and rental income from her Timothy Court and Wintergreen properties.
50. As the Petitioner notes, the POA does not expressly grant the AIF the authority to pay for her care. The POA does, however, state that the AIF "shall have the full power to provide for the *support*, *maintenance*, health of the incompetent principal." As all of the witnesses who testified acknowledged, care for Bojilina was required, institutional care was not an option, and they were all paid for the care they provided Bojilina. None of the family caregivers objected to the payments Brian gave them for their care.

51. There was testimony from the children that Bojilina had a locked metal box in which she kept important papers. Beverly testified that Bojilina told her she had $25,000 in cash in that box and that she was having trouble counting it. Beverly directed her to take it to the bank and place it in a safe deposit box, which she apparently did. Since her death, neither the lock box nor the $25,000 in cash had been located. The Court was not presented with any receipt from a bank, though Beverly testified she believed she had seen one. Brian said he did not know where the box was, though some of the items that had been in the box were seen in his house (photos and letters) in the years Bojilina lived with Brian.
52. At the time of Bojilina's incapacity, it appears she had approximately $736,000 in assets. That number includes her two real properties, IRA monies that came from her twin brother, Byron Ritchey's, estate, social security income, rental income, and proceeds from the sale of her Camano Island home. (Some of those assets are non-probate assets and were distributed upon her death and are not the subject of this trial.) The Petitioner asserts that Brian spent about $510,307 of Bojilina's assets without authorization.
53. In 2010, Brian sold the Timothy Court house, which had been part of the rental income that accounted for some of Bojilina's care. Blake Boatman listed the house for sale and received a commission for the sale. Other family members were aware of the sale. Brad testified through reading one of his emails to Beverly that Brian was selling the Timothy Court house in order to pay for Bojilina's care. No one objected to the sale of the house or told Brian he should reconsider. The house sold in 2011 at a loss of $60,000. Petitioner's expert CPA, Alan Knutson included that in his calculation of the losses to Bojilina's estate.
54. The total claim the Personal Representative makes against Brian, on a theory of conversion, is $547,454, plus pre-judgment interest.
55. Over the course of the trial, it became clear that Brian's business, Beaver's Tree Service, was moderately successful. Prior to Bojilina coming to live with Brian, income tax returns show he was making in the range of $20,000 a year from this business, depending on the year. As Bojilina's care requirements increased, Brian's business income plummeted and often showed a loss rather than any income.
56. His income tax returns show odd deductions as part of his Schedule C documentation. For example, on Schedule C for 2009 he claims a Mortgage deduction of $1114. In 2010, that deduction does not appear (the business ran at a loss both years). Brian also claimed Head of Household, listing the dependent as Bojilina. It's unclear how that impacted his tax burden. While it is not uncommon for a business run out of a home to deduct part of a mortgage as a home office deduction, when asked about that, Brian could not answer whether or not that was intention.
57. As part of the dissolution in 2003 and 2004, Brian was required to make a lump sum payment to Sandra in the amount of $60,000. In order to do that, Brian received a loan of $151,000. At that time the Academy Road house he and Sandra owned was valued at about $225,000. He listed his income as $1344.00 on documents dated in March 2004. The monthly payment for this mortgage was $1353.00 in 2004 and, as of April 2013, it was $1547.00. When asked how he paid his mortgage given that his income was the same or less than his mortgage, Brian answered, "I don't know" or "I don't recall." While Sandra was living with him and working for part of the time he

paid this mortgage, there was no testimony that she paid any part of the living expenses for the Academy Road home. The evidence conclusively shows that Brian was not paying for his mortgage and living expenses solely from his income from Beaver's Tree Service during the years he cared for Bojilina, based upon his testimony and the evidence shown in his tax records. He did receive occasional rental income from Bianca and Natalie, who sometimes rented the cabin on the Academy Road property, but that amount never exceeded $450 and it was inconsistent.

58. Thus, the Petitioners argue that Brian saw in his mother and her assets a means by which he could subsidize his lifestyle and his business and set about draining her assets.
59. The Court notes here that Brian's mortgage commitment long predated the concerns regarding Bojilina and the knowledge that she would be unable to live on her own. While the children all testified to there being signs of concern, the serious concerns did not arise until at least 2005, when she began forgetting her children's names and their birth order and showing signs of aphasia.
60. Based upon the ABC of Bookeeping's accounting and Alan Knutson's assessment of that report and his own evaluation of the materials he was given, it is clear that Brian used his mother's money to support his household, of which she was a part.
61. When asked by Petitioner's attorney, Mr. Britain, whether Brian used his mother's money to purchase a Subaru or pay his mortgage, Brian answered, "That's debatable." Unfortunately, Mr. Shepherd never really returned to ask Brian to expand on that answer. But it is the Court's view that Brian viewed his role as the primary caregiver for Bojilina as entitling him to compensation and while he did not track his caregiving hours or assign an hourly rate to those hours, he appears to have believed that the monies he used to support his household from his mother's money was compensation for that caregiving. The payment of his mortgage, utilities, groceries, necessities for care of Bojilina all were required in order to provide a place for Bojilina to live with Brian. Brian never asked for financial support from his siblings, none of them ever contributed to the costs of her care, and no one seemed to express any question or interest about how Brian would support himself given that he ran a sole proprietorship that required him to be in the field, something he could not do if he was responsible for being with Bojilina all day, every day.
62. During the time he acted as AIF for Bojilina, he purchased a $15,000 chipper for his business and a new Subaru for $25,000. As the ABC accounting and the Knutson analysis show, Brian also paid for items that were clearly not meant for Bojilina, such as electronic equipment, large amounts of alcohol, and other items. See Exhibit 94.
63. During that time, Brian also gave gifts to his siblings and their children, which they all accepted.
64. Upon Bojilina's death in 2013, the family gathered for her services. On the day of the services, the children asked to speak to Brian about Bojilina's estate. Brian told them that about $8000 remained in Bojilina's accounts (not counting the Ritchey trust monies, which were distributed among the children following her death). The children expressed shock at the depletion of her assets and demanded Brian explain how this occurred. Brian provided documentation over the ensuing months, which the children believed did not explain the depletion. Then, they began this TEDRA action, which has been pending since 2013.

CONCLUSIONS OF LAW

1. It is uncontroverted and, indeed, the law of the case, that Brian was the AIF for Bojilina Boatman from July 12, 2007 through her death.
2. Bojilina had income from her real property in the amount of about $3000. She had approximately $610,000 in assets at the time of the onset of her illness; there were other funds that were part of a trust from Byron Ritchey that are not subject to this proceeding.
3. The POA appointing Brian Boatman as AIF gave Brian "the power to do all things with respect to the assets and liabilities of the principal, real or personal, wherever located, as the principal could do if present and competent." Further, the POA grants the AIF the "full power to provide for the support, maintenance, and health of the incompetent principal, including provide informed consent for health care decisions on the principal's behalf." While the POA does not specifically state the AIF may pay caregivers for care of Bojilina, the language referencing the AIF's ability to provide support and maintenance must contemplate the need for caregiving, particularly given the nature of Bojilina's illness and the extraordinary caregiving needs that would be required as her disease progressed. The children, grandchildren, and professional caregiveers testified that in-home care for a person with Alzheimer's is expensive and requires skill and attention.
4. The Court finds no fault in Brian paying caregivers during the progression of Bojilina's illness. In addition, the Court specifically notes that all of the Boatman children who received payment for care accepted that payment, never questioned it, and never asked for an accounting regarding caregiving expenses. Blake testified that he asked about his mother's finances and was rebuffed, but the evidence does not support that assertion. Blake was centrally involved in selling both the Timothy Court and Wintergreen Lane properties. He knew they were being sold to create liquid assets to pay for Bojilina's care, as did the other children.
5. The POA specifically granted Brian the authority to make gifts. The witnesses testified that Bojilina rarely gave gifts. However, none of the family members who received gifts from Brian on behalf of Bojilina returned those gifts, expressed concern about the gifts, sought an accounting of the gifts given to the other family members or otherwise challenged Brian's gift giving. Instead, they sent him notes and emails thanking him for sharing their mother's assets.
6. Brian as AIF had a fiduciary duty to his mother. As *Estate of Palmer*, 145 Wash.App. 249 (Div. 2 2008), notes "the agent becomes a fiduciary who is bound to act with the utmost good faith and loyalty and to fully disclose all facts relating to his interest in and his actions involving the affected property." 145 Wash.App. at 263. Brian was required to track Bojilina's assets and provide an accounting of those assets. None of the Boatman children provided any evidence that they sought such an accounting from 2007 to 2013. They asked for that information following her death, which Brian provided through the ABC accounting, the vast majority of which was supported by receipts, even for purchases made years ago. Prior to the filing of the suit, he set forth in a declaration that he'd provided 4200

pages of documents showing her bank accounts and asset history. That assertion was never challenged at trial and indeed appeared to be well supported by the exhibits provided to the Court and the testimony of Kris Halterman, who used the receipts to created her accounting in Exhibit 56.

7. Brian's accounting attempted to show the manner in which he spent money, much of which was transferred from Bojilina's accounts, to his sole or he and Bojilina's shared accounts. The Court notes here that Brian appears to be a very poor record keeper, both for his business and for his personal finances and his mother's finances. This applied to the way he made payments to caregivers for work provided. He did not seek invoices, track payments made, negotiate hourly rates, or set a budget for such caregiver expenses. Had he done so the accounting process during Bojilina's life and after her death would have been much easier. The complexity of the finances made it very difficult for the other Boatman children to understand how Bojilina's assets became depleted over the course of Brian acting as AIF.
8. However, Brian *did* provide an accounting and it was one that the Petitioner's CPA expert, Alan Knutson, agreed accounted for her assets. He disagreed with the assignments of expenses but arrived at the same expenditures as Kris Halterman, with about a $2700 difference.
9. There is some evidence that Brian used some of the funds from Bojilina's assets to purchase recreational and electronic equipment, as well as alcohol purchases. Those purchases did not benefit Bojilina in any way.
10. However, the Court largely finds that this is a function of Brian's poor bookkeeping. Brian never calculated the hours he worked doing caregiving. This was grave error on his part. Instead, he transferred money from joint accounts he held with Bojilina to pay for his mortgage, purchase groceries, and otherwise support the home where Bojilina lived. Had Brian sought professional advice, any professional would have advised him to calculate his hours worked by a reasonable rate and paid himself at regular intervals. Had he paid himself in that manner and received what would essentially have been a paycheck, how he spent that money would have been of no concern to the Court or the family. That said, it is fundamental to note here that Brian provided the vast majority of 24 hour care for Bojilina over the course of 7 years. It is also critical to note that Bojilina lived in his home, ate meals there, and received significant physical care and emotional support from Brian during this period of her life.
11. During this time, Brian's siblings provided no financial support. They provided some caregiving respite and while they did not to appear to have asked for payment for those services, they never declined it when Brian gave it, which was a regular occurrence. They also never claimed that income as income on their taxes.
12. To a person, Brian's siblings expressed gratitude to Brian for his efforts during Bojilina's life. In addition, they seem to have never inquired how he supported himself given that he was largely unable to work due to his caregiving responsibilities. How they expected him to provide that caregiving and support himself when those caregiving responsibilities precluded him from working and he had no other source of income remains a mystery to this Court. Rather, it

appears from the testimony and evidence that they accepted Brian's care of for their mother, were grateful for it, and gave little thought to how Brian's business and income fared during this time.

13. As *Estate of Palmer* holds, an AIF is responsible to provide an accounting: "Inherent in the fiduciary relationship between principal and attorney-in-fact is the duty to account for the assets managed by the attorney-in-fact . . . RCW 11.94.090(1)(b) authorizes the court to compel an accounting from the attorney-in-fact if he or she fails to provide a proper accounting." *Palmer,* 145 Wash.App. at 264.
14. During the course of Brian's position as AIF, any of the Boatman children could have brought a petition to the Court to seek an accounting under then RCW 11.94, now codified as 11.125.160. The RCWs contemplate the need for court supervision over an AIF's actions and provide a mechanism by which any interested party could compel the AIF to provide an accounting. None of them did so.
15. In addition, any of the Boatman children, including Brian, could have sought a Guardianship of the Person and Estate under RCW 11.88, seeking a court finding that Bojilina was incapacitated, appointing a Guardian ad Litem to provide a report to the Court that guided the Court's analysis, and recommending a guardian and a standby guardian. Such a procedure would have then required regular reports to the Court regarding Bojilina's assets, expenditures for her care, and court approval of the same throughout the time of her incapacitation. None of the Boatman children sought such court supervision.
16. Further, had any of the Boatman children believed Brian to be placing Bojilina at risk through his care or his management of her funds, they could have brought a Vulnerable Adult Protection Order proceeding or contacted Adult Protective Services. Again, they did not.
17. Instead, the Boatman children thanked Brian for his care, accepted payment for their care of Bojilina when Brian paid them, accepted gifts from Brian on Bojilina's behalf when Brian sent them checks, liberally borrowed from Bojilina's assets through Brian throughout his time as AIF, and expressed that they themselves could not provide the care Brian did for their mother, grandmother, and mother-in-law.
18. Ultimately, they sought none of the remedies available to them at law to address Brian's actions as AIF and caregiver and instead benefited from that care, and seemed to give little thought to the impact providing that care had on Brian's life, business, or finances.
19. The law in the State of Washington clearly sets out that an AIF may be compensated for services rendered. In addition, however, the POA in this case contemplates that Bojilina's assets may be used by the AIF for "the support, maintenance, health of the incompetent principal." In addition to providing Bojilina a place to live, food to eat, 24-hour caregiving through himself and others whom he paid, Brian sacrificed his business and income to be available to his mother on a full-time basis. As the evidence showed, Brian paid caregivers between $12 to $15 per hour, depending on the level of care they provided. From the time of the triggering of the POA in July of 2006 to the date of her death in

May of 2013, Bojilina needed a total of 53,520 hours of around the clock care. A professional in-home care provider would be paid for hours he or she slept, but it is reasonable to deduct some of the hours a family caregiver slept from that amount. Thus, the Court deducts 6 hours per night for sleeping. Even if Brian slept 8 hours per night, the uncontroverted evidence was that he was up once or twice a night to care for Bojilina, often requiring him to change sheets and do laundry to care for her and make her bed clean. Thus, the total number of hours Bojilina needed care is 53,520 hours minus 3990 hours for Brian's sleeping, totaling 49,530 hours of care. Given that Brian paid caregivers between 12 to 15 dollars per hour, the court calculates his hourly rate at $13.50 (an admittedly below market value for the services). That amount comes to $668,655.

20. Brian paid other caregivers $140,083 over the course of his time as AIF. Subtracting that from the total amount *Bojilina's care required equals $528,572.* The amount of money the Petition for Conversion alleges Brian converted to his own use is $547,454.
21. In addition to the payments Brian made to caregivers, Brian made gifts to family members and caregivers in the amount of $134,973.00. As noted at length, no family member or caregiver questioned the gifts, sought to return them, or declined them.
22. The law allows an AIF to pay for the services he provides while serving in that capacity. Service as an AIF varies wildly from simple bookkeeping to the kind of around-the-clock care Bojilina required. Brian's care of Bojilina was extensive and constant. It was reasonable for Brian to be compensated for such care. Brian's tracking of his compensation was abysmal. Nonetheless, based upon the evidence and the testimony regarding how much time he put into caring for Bojilina and the amount he paid professional and family caregivers, the Court can find no evidence that Brian paid himself beyond what he paid others for the care of his mother.
23. Further, the other children of Bojilina had notice throughout the time Bojilina lived with Brian that he was using her assets to care for her. They also knew he was unable to work. Blake served as real estate agent for both sales of her properties. Other siblings acknowledged to each other that caring for Bojilina was costly and the properties were being sold to offset that cost. Even if both properties had been rented and she had received rental income of about $2400 per month, that would have only totaled $168,000, well below the cost of her care.
24. The law of estoppel in Washington holds, in multiple cases in countless factual situations, that silence is complicity. "Where a party knows what is occurring and would be expected to speak, if he wished to protect his interests, his acquiescence manifests his tacit consent." *Bunn v. Walch*, 54 Wash.2d 457, 463 (1959). More recent cases on the doctrine of equitable estoppel reaffirm that principle. A party cannot reap the benefits of the actions of someone against whom they might have a claim and then later take a position adverse to the benefits they received. Each of the Boatman children, including Beverly Young, the Personal Representative, reaped the benefits of Brian's actions as PR. They accepted payments for their caregiving. They accepted gifts he sent them. They took loans from their mother's accounts. They acknowledged and gave thanks to Brian for those

monies. They acknowledged and gave thanks for the work he did to care for their mother over the course of 6 years as he watched her slow decline, put his own life on hold, and cared for her as he watched his mother fade from his grasp. And at the time of her passing, they seemed to expect that her Estate would be untouched and they would be entitled to the residuary of her estate in equal shares, and they clearly expected that to be substantial. When it was not, they brought this suit, demanding that Brian explain himself, after years had gone by in which they had not utilized any of the multitude of legal options available to them to seek such an accounting and had, instead, benefited from Brian's care of Bojilina.

25. Therefore, the Court finds in favor of Brian Boatman, in its entirety.
26. It so finds based upon the actual cost of care of Bojilina Boatman, as the Court has laid out in exhaustive detail in this order, it also finds that the Personal Representative's claims are barred by equitable estoppel.
27. Since Brian Boatman is the prevailing party, the Court HEREBY ORDERS that the Personal Representative pay Brian Boatman's attorney's fees and costs, in accordance with RCW 4.84.030. Brian Boatman's attorney shall submit a cost bill for the Court's analysis and the Court will issue an order against the Personal Representative for such fees and costs as it deems reasonable.

SO ORDERED this 6th day of November, 2019.

Raquel Montoya-Lewis
Superior Court Judge

FILED
5/10/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of BOJILINA H. BOATMAN. THE ESTATE OF BOJILINA H. BOATMAN, Appellant/Cross Respondent, v. BRIAN BOATMAN, Individually and as Trustee of the Brian Boatman Revocable Living Trust, Respondent/Cross Appellant, BEVERLY YOUNG, Appellant.	No. 80933-4-I (consolidated with Nos. 81000-6-I, 81200-9-I, 81201-7-I, and 81202-5-I) DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — This consolidated appeal arises from attorney fees and costs awarded in favor of Brian Boatman in a Trust and Estate Dispute Resolution Act[1] (TEDRA) action against the Estate and against Young, its personal representative. Young asserts the trial court erred in awarding costs and attorney fees in favor of Brian Boatman and against Young. She asserts the trial court erred in denying her motion to vacate the order as void. The Estate asserts the trial court erred in the amount of costs and attorney fees awarded in favor of Brian Boatman and argues no award should have been entered against either the Estate or

[1] Chapter 96A RCW.

Young. Brian asserts the trial court erred in declining to find the other Boatman siblings were parties and find them jointly and severally liable with the Estate and Young for the awarded costs and attorney fees. Both Brian and Young request attorney fees and costs on appeal. The award against Young was error. The award of costs against the Estate was error in part. The trial court did not err in denying costs and fees in favor of Brian for Phase I, against other siblings in Phase II, or in exercising its discretion in the amount of fees awarded. We affirm in part, vacate in part, and remand.

FACTS

In 2007, Bojilina Boatman began living in her son Brian Boatman's[2] home full-time. Brian was responsible for her care until her death in 2013. Bojilina's five other children (Boatman siblings) then filed an initial TEDRA petition against Brian seeking recovery for assets transferred from Bojilina to Brian while he was serving as her attorney-in-fact (Phase I). Brian filed a response and counterclaim as an individual and as attorney-in-fact of the estate of Bojilina Boatman (Estate) asking for attorney fees. He moved to dismiss the petition on the grounds that the Boatman siblings were not parties and had no standing to bring the action.

In 2014, the trial court dismissed the Phase I petition for lack of standing. The Boatman siblings appealed. Brian moved for an award of attorney fees, on which the court deferred ruling, pending resolution of the appeal.

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[2] For clarity, Brian Boatman and Bojilina Boatman will be referred to by their first names.

In 2016, this court affirmed the trial court's dismissal of the Boatman siblings' claims based on lack of standing. Young v. Boatman, No. 72643-9-I, slip. op. at 1 (Wash. Ct. App. Feb. 8, 2016) (unpublished), https://www.courts.wa.gov/opinions/pdf/726439.pdf. We explained that RCW 11.96A.030(5)'s definition of "party" includes estate beneficiaries, and under RCW 11.96A.080 any party may have a judicial proceeding related to such matters. Id. at 9-10. However, TEDRA expressly states that it doesn't supersede other provisions of Title 11 RCW. Id. at 10. And, under RCW 11.48.010, only the personal representative has the authority to maintain and prosecute actions on behalf of the Estate. Id. at 10-11. Still, we held that Brian had a conflict of interest as personal representative with respect to the Estate's pursuit of claims against him. Id. at 13-14. We ordered the trial court to appoint an interim personal representative on remand "to determine whether to pursue an action on behalf of the Estate against Brian as the attorney-in-fact for Bojilina." Id. at 14.

Following remand, the court-appointed interim personal representative issued a report concluding that a claim was warranted on behalf of the Estate against Brian as attorney-in-fact. Brian ultimately resigned as personal representative. Beverly Young, one of the Boatman siblings, was appointed by the court as personal representative of the Estate.

The Estate, with Young acting as personal representative, then filed and served a TEDRA petition against Brian (Phase II). The only parties to the Phase II petition were the Estate as the petitioner and Brian (individually and as trustee for the Brian Boatman Revocable Living Trust) as the respondent. The petition

asked for an award of attorney fees and costs pursuant to RCW 11.96A.150. Brian answered and counterclaimed for attorney fees and costs pursuant to RCW 11.96A.150 and RCW 11.94.120.

On November 6, 2019, following a bench trial, the court entered findings of fact and conclusions of law finding in favor of Brian and denying all of the Estate's claims. It found,

> Since Brian Boatman is the prevailing party, the Court HEREBY ORDERS that the Personal Representative pay Brian Boatman's attorney's fees and costs, in accordance with RCW 4.84.030. Brian Boatman's attorney shall submit a cost bill for the Court's analysis and the Court will issue an order against the Personal Representative for such fees and costs as it deems reasonable.

The Estate moved for reconsideration, arguing awards under RCW 4.84.030 are limited to allowable costs and could be imposed only against the Estate. The trial court denied the motion for reconsideration but reserved on the issue of attorney fees.

Brian then moved for entry of judgment on attorney fees and costs incurred in both TEDRA petitions. He requested fees and costs in Phase I. He also requested fees and costs in the Phase II against the Boatman siblings, or in the alternative, against Young in both her individual capacity and in her capacity as personal representative of the Estate.

On December 20, 2019, the trial court entered an order on entry of judgments for attorney fees and costs. The order concerned an award of attorney fees and costs pursuant to RCW 11.96A.150 and RCW 4.84.030. The court declined to award attorney fees related to the Phase I petition, as that was a matter

of first impression. It also declined to find that the Boatman siblings were parties against whom attorney fees and costs could be awarded. However, the trial court awarded $12,835.97 in costs and $111,574.00 in attorney fees to Brian against Young "individually and as Personal Representative of the Estate of Bojilina Boatman, jointly and severally."

On January 3, 2020, the Estate filed a notice of appeal on the findings of fact and conclusions of law and order after trial, the order denying the Estate's motion for reconsideration, and the order on entry of judgments for attorney fees and costs.

On January 6, 2020, The Estate filed a motion to vacate the December 20 order as to Young in her individual capacity. She argued the fee order was void because she was not a party to the Phase II petition and therefore the trial court lacked the authority and jurisdiction to impose fees or costs against her. On January 21, 2020, the court denied her motion. Judge Robert E. Olsen held that as the successor judge he was barred from granting the requested relief because then-Judge Raquel Montoya-Lewis had presided over the trial. That same day, Young filed a notice of appeal on the December 20, 2020 fees order.

On January 22, 2020, Judge Pro Tem Montoya-Lewis[3] entered a "Findings/Conclusions and Order re Award of Attorneys' Fees and Cost[s]" and a "Judgment on Attorneys' Fees."[4] The order reiterated that attorney fees would not

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[3] Justice Montoya-Lewis was sworn as an associate justice of the Washington State Supreme Court on January 6, 2020.

[4] These orders were not properly submitted for signature, as RAP 7.2 limits the authority of the trial court to act in a case after review is accepted by the appellate court.

be awarded in relation to Phase I nor against the Boatman siblings who were not parties in the case. The court awarded attorney fees and costs in the amount of $111,574.00 under RCW.96A.150 and $13,035.97[5] in costs under RCW 4.84.010 and .080 against Young in her capacity as personal representative, but not as an individual.

This court consolidated the appeals, designating Young in her individual capacity as appellant, the Estate as appellant/cross-respondent, and Brian individually and as Trustee of the Brian Boatman Revocable Living Trust as respondent/cross appellant.

DISCUSSION

The Estate first argues the trial court erred in awarding attorney fees under RCW 11.96A.150 against the Estate and Young. Next, the Estate argues the trial court erred in awarding excessive costs under chapter 4.84 RCW.

Young also asserts the trial court erred in awarding attorney fees and costs in favor of Brian and against Young as an individual who was not a party to the suit. Therefore, she also asserts the court erred in denying her motion to vacate.

Brian counters that he is entitled to his reasonable attorney fees and costs. And, he asserts the trial court erred in declining to find that the other Boatman siblings in this matter were parties subject to an order requiring payment of reasonable attorney fees and costs incurred in both TEDRA matters.

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[5] This is a $200.00 increase in the cost award from the December 20 order. The record does not indicate the reason for the increase.

The general rule in Washington, commonly referred to as the "American rule," is that each party in a civil action will pay its own attorney fees and costs. Berryman v. Metcalf, 177 Wn. App. 644, 656, 312 P.3d 745 (2013). But, trial courts may award attorney fees when authorized by contract, statute, or a recognized ground in equity. Id.

Whether a party is entitled to attorney fees is an issue of law that we review de novo. Little v. King, 147 Wn. App. 883, 890, 198 P.3d 525 (2008). Whether the fee award is reasonable is a matter of discretion for the trial court, which we will alter only if we find an abuse of discretion. Bloor v. Fritz, 143 Wn. App. 718, 747, 180 P.3d 805 (2008). Discretion is abused when the trial court exercises it on untenable grounds or for untenable reasons. Berryman, 177 Wn. App. at 657. The burden of demonstrating that a fee is reasonable is on the fee applicant. Id.

I. Fees and Costs Awarded in Phase II Against Young

Young asserts the trial court erred in awarding attorney fees and costs against Young as an individual. She asserts that she is not a party under TEDRA and therefore the court had no authority or jurisdiction to order fees and costs against her in this matter.

The fees order awarded attorney fees under RCW 11.96A.150 and costs under RCW 4.84.030 against Young "individually and as a Personal Representative of the Estate . . ., jointly and severally."

As with trustees of a trust, personal representatives of an estate owe a fiduciary duty to the heirs of the estate and must conform to the laws governing trustees. In re Estate of Ehlers, 80 Wn. App. 751, 761-62, 911 P.2d 1017 (1996).

A personal representative stands in a fiduciary relationship to those beneficially interested in the estate. In re Estate of Larson, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985). The personal representative must exercise the utmost good faith and diligence in administering the estate in the best interests of the heirs. Id.

It is well established under Washington Law that ordinarily, trusts must bear the general costs of administration of the trust—including the expenses of necessary litigation. Allard v. Pac. Nat'l Bank, 99 Wn.2d 394, 408, 663 P.2d 104 (1983). But, where litigation is necessitated by the inexcusable conduct of the fiduciary, the fiduciary individually must pay those expenses. Id. In Jones, our Supreme Court held that the personal representative should personally pay attorney fees because the litigation was necessitated by his multiple breaches of fiduciary duty to the remaining beneficiaries. In re Estate of Jones, 152 Wn.2d 1, 6, 21, 93 P.3d 147 (2004). The court cited to Allard in finding that the personal representative should personally the pay attorney fees. Id. at 21. It noted, "Allard is a trust case, but still is applicable here since a personal representative has fiduciary duties similar to those of a trustee, as he is acting in a trust capacity." Id. at n.16.

The statutory liability of a fiduciary for costs is similarly limited. RCW 4.84.150 provides,

> In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his or her own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the

> plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

Here, Young served as personal representative to the Estate in the same fiduciary relationship as a trustee has to a trust. The court made no finding of fact of a breach of fiduciary duties or inexcusable conduct on the part of Young as personal representative to the Estate. Young sought appointment with agreement from the Boatman siblings and with eventual agreement from Brian. She filed the Phase II petition because the court-appointed interim personal representative, found that the "pursuit of an action on behalf of the Estate against Brian Boatman" was warranted.

Further, although RCW 11.96A.030(5)(c) defines "party" to include "personal representatives," RCW 11.96A.150(1) concerning attorney fees provides,

> Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings.

(Emphasis added.) As with the Phase I petition, it must be acknowledged that "party" has different meanings in different sections of the statutory scheme. Even if the statute could be read so broadly, in Phase II, Young was not acting in the capacity of a party but in her appointed fiduciary capacity. Conforming to general principles of Washington trust and estate law, Young should not have been ordered to personally pay attorney fees in relation to Estate litigation.

The trial court erred in awarding $12,835.97 in costs and $111,574.00 in attorney fees in favor of Brian against Young in her individual capacity. We vacate the December 20, 2019 order as void as to Young individually and remand.[6]

II. Fees and Costs in Phase II Against the Estate

The Estate argues the trial court erred in awarding attorney fees and costs under RCW 11.96A.150 against it. Further, it argues the court erred by awarding excessive costs.

A. Attorney Fees

The order awarded attorney fees under RCW 11.96A.150. RCW 11.96A.150(1) grants broad discretion to the court in the award of attorney fees and costs. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate. Id. RCW 11.96A.150(1)(b) authorizes the court to award fees "from the assets of the estate or trust involved in the proceedings." We will not interfere with the trial court's decision to allow attorney fees in a probate matter, absent a manifest abuse of discretion. In re Estate of Black, 116 Wn. App. 476, 489, 66 P.3d 670 (2003), aff'd, 153 Wn.2d 152, 102 P.3d 796 (2004).

The Estate argues that because the court-appointed interim representative recommended that the Estate pursue claims against Brian, attorney fees should not have been awarded against it for doing so. But, the issue is not whether the

[6] Young asserts the fees order is void for lack of authority and jurisdiction. Young also asserts the trial court erred in denying her motion to vacate pursuant to the successor judge doctrine. Because we vacate the award on other grounds, we need not consider these arguments.

Estate had a good faith basis to have pursued its claim. Having a good faith basis to bring a claim does not eliminate the trial court's discretion to award fees when the Estate fails to prevail on the claim.

The Estate further argues the novel matter doctrine also supports reversing an award of attorney fees in this case. It argues issues related to the first petition as well as the nature of Young's appointment were novel.

Here, In re the Estate of Berry, 189 Wn. App. 368, 379, 358 P.3d 426 (2015), is instructive. "Whether a case involves novel or unique questions is a factor that a court may deem relevant in its consideration of a request for attorney fees under RCW 11.96A.150, and in Stover, we did deem it relevant." Id. (citing In re Estate of Stover, 178 Wn. App. 550, 564, 315 P.3d 579 (2013)). "But we did not hold that it is always dispositive or even always relevant." Id. As such, the novel matter doctrine is not an absolute bar to fees in novel cases. It is a factor that the court may consider. The novel legal issue in Phase I and the potential novelty of Young's appointment were both key parts of this case's procedural history. We may safely assume the trial court considered novelty as a factor.

The Estate has not demonstrated that the trial court abused its discretion. We affirm the award of attorney fees against the Estate.

B. Costs

The Estate also argues the trial court erred by awarding excessive costs under RCW 4.84.030. Brian asserted a claim for expenses of $12,835.97.

RCW 4.84.030 provides, "In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements." We

review an award of costs for abuse of discretion. Payne v. Paugh, 190 Wn. App. 383, 413, 360 P.3d 39 (2015).

Brian did not reply to these assertions, because he asserts these costs were awarded under RCW 11.96A.150. Brian's answer to the petition sought an award of fees under RCW 11.96A.150 and RCW 11.94.120. But, that is not what the court ordered. The court wrote in the December 20 fees order, "For clarification, the Court found that Brian Boatman is entitled to attorney fees pursuant to RCW 11.96A.150, and costs in accordance with RCW 4.84.030." This order was proposed by counsel for Brian and adopted with few edits. It is clear the trial court did not award costs under RCW 11.96A.150.

RCW 4.84.010 limits costs which may be recovered to a narrow range of expenses, including filing fees, statutory attorney fees and witness fees, and expenses associated with certain depositions. The Estate argues that Brian submitted nothing to support the award of any of these expenses as taxable costs under RCW 4.84.010, and that almost none of the listed items qualify as awardable expenses.

Under RCW 4.84.010(7), a prevailing party is entitled to the costs of taking depositions if the depositions were taken and used at trial as substantive evidence or for impeachment purpose. Payne, 190 Wn. App. at 413. Of the 10 depositions Brian listed, only Blake Boatman, Brent Boatman, and Young's depositions were taken by counsel for Brian. Of those, two pages of Brent Boatman's deposition

were used for impeachment purposes during his cross-examination.[7] Accordingly, the proper application of the pro rata share requirement set forth in RCW 4.84.010(7) to the $782.05 total transcription cost would justify a maximum cost award of $13.96 (2/112 x 782.05 = $13.96). The trial court erred in awarding costs under RCW 4.84.030 for depositions not considered by the court.

Next, the Estate argues that there are no grounds authorizing the award for expert witness fees as costs, such as those listed for John Fountaine. It relies on Estep v. Hamilton, which noted that "our Supreme Court has recognized there are no grounds for awarding expert witness fees as costs." 148 Wn. App. 246, 263, 201 P.3d 331 (2008). Accordingly, the trial court erred in awarding costs under RCW 4.84.030 for expert witness fees.

The Estate further argues the trial court erroneously ordered filing fees in Phase II. Brian had already asserted a counterclaim in Phase I and was not required to pay a second counterclaim filing fee. Further, as the trial court ultimately granted the Estate's motion to strike Brian's jury demand, the Estate argues he also was not entitled to an award of costs for his jury demand filing fee. The Estate similarly notes Brian's duplicative $200.00 statutory attorney fees arising out of both Phase I and Phase II as being improperly awarded. We agree. It was error to award these fees as costs under RCW 4.84.030.

Additionally, the Estate argues RCW 4.84.010 does not authorize a cost award for miscellaneous court reporter fees. So, it asserts "Brian's claims for such

[7] Blake Boatman's deposition was published and unsealed in an attempt to impeach DeLisa Boatman, but this use was objected to by the Estate and the judge agreed it was not appropriate.

fees totaling $10.00, with respect to Phase I, and $640.00, in connection with Phase II, should have been denied." Brian does not identify authorization by law for the award of costs of court reporter fees in his affidavit of costs or memorandum in support of entry of judgments on attorney fees and costs. Absent such authority, these costs were awarded in error under RCW 4.84.030.

In total, with respect to the December 20 order, the Estate alleges the trial court erred in awarding $450.00 in Phase I costs and $12,835.97 in Phase II costs. It argues costs totaling $453.96 should have been awarded ($240.00 for one counterclaim filing fee plus $13.96 pro rata share of Brent's deposition plus $200.00 for one statutory attorney fee). We agree.

We direct the trial court to amend the judgment accordingly on remand.

III. Denial of Brian's Requests for Certain Attorney Fees and Costs

A. Against the Boatman Siblings as Parties to the Proceeding

Brian asserts that while he argued the Boatman siblings were not the appropriate petitioner in either phase, in Phase II the Boatman siblings were all parties under the statutory scheme. He points to RCW 11.96A.030(5), which provides in part,

> (5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:
>
> . . . .
>
> (c) The personal representative;
>
> (d) An heir;

> (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
>
> . . . .
>
> (i) Any other person who has an interest in the subject of the particular proceeding.

The Boatman siblings were the petitioners in Phase I petition and pleaded as persons interested in the matter in Phase II. So, Brian asserts that "[i]t cannot be seriously argued" they were not unambiguously parties under 11.96A.030. But, again, that term has different meaning throughout the statutory scheme. RCW 11.96A.030 states, "The definitions in this section apply throughout this chapter unless the context clearly requires otherwise."

In Phase I, this court noted the definition of a "party" under RCW 11.96A.030 includes beneficiaries. Boatman, No. 72643-9-I, slip. op. at 9. However, under the plain and unambiguous language of Title 11 RCW, only the personal representative has the authority to bring claims on behalf of the Estate against Brian under RCW 11.48.010. Id. at 12. RCW 11.96A.080(2) expressly states that the provisions of TEDRA do not supersede but instead supplement the other provisions of Title 11 RCW. So, while all heirs are potentially "parties" under one section of TEDRA, the definition of "party" was limited by context elsewhere in the statutory scheme.

The Boatman siblings were not parties to the Phase II petition to which the fees order pertained. Their interests as beneficiaries were represented by the Estate through the personal representative. None of them appeared in an individual capacity and none asserted any claim or interest different from the

Estate. And, even if we were to conclude that the siblings were parties to the proceeding, the court had the discretion to award or not award fees from any party to any other party.

We affirm the trial court's denial of an award of attorney fees to Brian payable by the other Boatman siblings in either TEDRA phase on the basis that they were parties to the matter.[8]

B. Attorney Fees for Phase I

Brian argues that the trial court erred in determining that fees were not appropriate in Phase I based on the novelty of the standing issue litigated because standing is not a relevant concern. The case law he relies on does not involve TEDRA actions. See Chuong Van Pham v. City of Seattle, 159 Wn.2d 527,543,151 P.3d 976 (2007); Boeing Co. v. Sierracin Corp., 108 Wn. 2d 38, 65, 738 P.2d 665 (1987).

RCW 11.96A.150(1) allows the court to consider any relevant factor in awarding fees, including whether a case presents novel or unique issues. In re Guardianship of Lamb, 173 Wn.2d 173, 198, 265 P.3d 876 (2011); see also Berry, 189 Wn. App. at 379 (holding a court may deem novelty a relevant factor in its consideration of request for fees under TEDRA); Stover, 178 Wn. App. at 564

[8] Brian also asserts if he had been personal representative, he would have written to the Boatman siblings demanding they return money distributed by him prior to Phase I. He further argues in failing to do so, Young has breached her duty to Brian and should be removed as personal representative to the Estate. That is not an issue before this court. We decline to remove Young as personal representative to the Estate.

(declining to award fees because the TEDRA case presented a novel issue of statutory construction).

Here, the Phase I litigation was pursuant to RCW 11.96A.150 and involved a novel issue of statutory construction. We find that the trial court did not err in declining to award Brian attorney fees in Phase I.

C. Amount of Attorney Fee Awarded

Brian further argues the trial court abused its discretion by reducing his fees from $223,000.00 to $111,574.00. But, the larger number includes the fees he requested for Phase I. In reference to attorney fees incurred during Phase II, Brian argues that the trial court reduced his award by over $50,000.00.

Brian relies on Hensley v. Eckerhart, 461 U.S. 424, 435, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983), for the assertion that a plaintiff should recover a fully compensatory fee where the plaintiff has obtained excellent results. But, no Washington case has declared it an abuse of discretion merely to award attorney fees under RCW 11.96A.150 that were not all of the requested attorney fees. "Because of the 'almost limitless sets of factual circumstances that might arise in a probate proceeding,' the legislature 'wisely' left the matter of fees to the trial court, directing only that the award be made 'as justice may require.'" Black, 116 Wn. App. at 489 (internal quotation marks omitted) (quoting In re Estate of Burmeister, 70 Wn. App. 532, 539, 854 P.2d 653 (1993), rev'd on other grounds, 124 Wn.2d 282, 877 P.2d 195 (1994)).

We find that the court did not abuse its discretion by declining to award to Brian all of the attorney fees he requested under RCW 11.96A.150.

IV. Attorney Fees and Costs on Appeal

Both Brian and Young request reasonable attorney fees and costs on appeal under RCW 11.96A.150. RCW 11.96A.150 grants extensive discretion to courts to award attorney fees in "all proceedings governed by this title."

Young was acting under her fiduciary duty as the Estate's personal representative. The trial court made no findings that she breached her fiduciary duty or mismanaged the Estate. We find that she is entitled pursuant to RAP 18.1(a) to reasonable attorney fees and costs incurred attempting to vacate and in appealing the award of attorney fees and costs against her as an individual. We find that Brian is not entitled to attorney fees on appeal against any party.

We affirm in part, vacate in part, and remand.

Appelwick, J.

WE CONCUR:

FILED
6/4/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Estate of BOJILINA H. BOATMAN.

THE ESTATE OF BOJILINA H. BOATMAN,

Appellant/Cross Respondent,

v.

BRIAN BOATMAN, Individually and as Trustee of the Brian Boatman Revocable Living Trust,

Respondent/Cross Appellant,

BEVERLY YOUNG,

Appellant.

No. 80933-4-I
(consolidated with Nos. 81000-6-I, 81200-9-I, 81201-7-I, and 81202-5-I)

ORDER GRANTING MOTION TO PUBLISH

The respondent, Brian Boatman, has filed a motion to publish. The appellant, Beverly Young, has filed an answer. A majority of the panel has reconsidered its prior determination not to publish the opinion filed for the above entitled matter on May 10, 2021 finding that it is of precedential value and should be published. Now, therefore, it is

ORDERED that the motion to publish is granted; it is further

No. 80933-4-I/2

ORDERED that the written opinion filed May 10, 2021 shall be published and printed in the Washington Appellate Reports.

Appelwick, J.
Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BEVERLY YOUNG, BLAKE BOATMAN BRADLEY BOATMAN, BRENT BOATMAN, and WILLIAM BOATMAN, Appellants, v. BRIAN BOATMAN, individually and as Attorney-in Fact for Bojilina H. Boatman; and THE ESTATE OF BOJIILINA H. BOATMAN, Respondents.	No. 72643-9-I DIVISION ONE UNPUBLISHED OPINION FILED: February 8, 2016

SCHINDLER, J. — The beneficiaries of the Estate of Bojilina H. Boatman (Estate) appeal summary judgment dismissal of their Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, petition. Because only the personal representative can bring a claim on behalf of the Estate for the actions of the attorney-in-fact for Bojilina, we affirm the determination that the beneficiaries do not have standing to bring a TEDRA action against the attorney-in-fact on behalf of the Estate for breach of fiduciary duty and conversion. However, because the undisputed facts establish a conflict of interest, we reverse dismissal of the TEDRA petition to remove the personal representative. On remand, the court shall appoint an interim personal representative to determine whether to pursue a claim on behalf of the Estate against the attorney-in-

fact for breach of fiduciary duty and conversion. Accordingly, we reverse in part, affirm in part, and remand.

FACTS

On October 3, 2005, Bojilina H. Boatman executed a will and a durable power of attorney. The power of attorney designates her son Brian Boatman as the attorney-in-fact. The power of attorney gives Brian[1] "the power to do all things with respect to the assets and liabilities . . . as the principal could do if present and competent, including but not limited to the following:

> a. To make, amend, alter or revoke any of the principal's wills or codicils; and
> b. To make, amend, alter or revoke any of the principal's life insurance beneficiary designations; and
> c. To make, amend, alter or revoke any of the principal's employee benefit plan beneficiary designations; and
> d. To make, amend, alter or revoke any of the principal's trust agreements; and
> e. To make, amend, alter or revoke any of the principal's community property agreements; and
> f. To make gifts of any property owned by the principal; and
> g. To make transfers of any of the principal's property to any trust, whether or not the principal is a beneficiary thereof.
> h. To sell, transfer, convey, encumber, mortgage, lease, and purchase, any property, real or personal.
> Further, the attorney-in-fact shall have the full power to provide for the support, maintenance and health of the incompetent principal, including provide informed consent for health care decisions on the principal's behalf.

The power of attorney states that it shall take effect upon receipt of a written statement by a doctor that Bojilina cannot "manage her property and affairs for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, or disappearance."

[1] We use first names for purposes of clarity.

In her will, Bojilina leaves the majority of the Estate in equal shares to each of her six adult children: Bradley Boatman, Beverly Young, Brian Boatman, Brent Boatman, Blake Boatman, and William Boatman. Bojilina designates her son Brian as the personal representative of the Estate.

Bojilina started living with Brian in early 2007. Brian assumed primary responsibility for her care. On July 12, 2007, Dr. Carletta Vanderbilt diagnosed Bojilina with dementia and Alzheimer's disease. Dr. Vanderbilt signed a written statement that Bojilina is "incompetent to make decisions affecting health or financial issues." Under the terms of the durable power of attorney, Brian assumed responsibility as the attorney-in-fact for his mother. Brian acted as the attorney-in-fact for Bojilina from July 12, 2007 until she died on May 18, 2013.

On June 7, 2013, the court admitted the will into probate and appointed Brian as the personal representative of the Estate with nonintervention powers and without bond.

On September 5, 2013, Brian filed an inventory of the Estate. The inventory identifies $44,636.23 in probate assets and $298,497.65 in nonprobate assets.

On December 20, 2013, Bradley Boatman, Beverly Young, Brent Boatman, Blake Boatman, and William Boatman (collectively the beneficiaries) filed a TEDRA petition against Brian "individually and as the Attorney-in Fact for Bojilina H. Boatman" and against "the Estate of Bojilina H. Boatman." The beneficiaries also served a request for production of financial documents.

The petition alleged Brian owed a fiduciary duty as attorney-in-fact to Bojilina "while she was alive." The petition alleged that "[w]hile Brian served as Decedent's attorney-in-fact, Decedent's resources dramatically dissipated, resulting in a loss of:

approximately $555,000-$575,000 in ultimate probate assets." The beneficiaries alleged that "without permission, justification, or authorization, Brian transferred substantial assets of Decedent to himself," and as a result, "Brian is liable to the Estate for all of Decedent's assets converted by him."

The beneficiaries alleged that as the personal representative of the Estate, "Brian owes a fiduciary duty to the Estate," and requested the court remove Brian as the personal representative, revoke "the Letters Testamentary," and appoint the "alternative representative as specified in the Will." The petition alleged, in pertinent part:

> Petitioners are asserting claims personally against Brian for conversion, breach of fiduciary duties and for an accounting relating to and arising out of Brian's conduct as attorney-in-fact for Decedent, as well as seeking revocation of letter testamentary issued to Brian with respect to the Estate in the Probate.

The Estate and Brian filed an answer to the TEDRA petition. The answer asserts Brian "managed his mother's assets under a valid power of attorney which specifically allowed paying for her support, maintenance, and health as well as gifting." The answer also asserts Brian "did not improperly divert any of Bojilina's assets;" "all payments . . . made from Bojilina's assets were authorized and reasonable;" and "Brian did not make himself a loan, so it was proper that no loan appeared on the inventory of the estate."

The answer asserts the Estate "only includes assets that existed as of the date of [Bojilina's] death, not for the seven years prior to her death." Brian asserts the duties he owed to Bojilina "as attorney-in-fact are different from the duties he owes the estate and his siblings as beneficiaries and do not directly continue and transfer from one to the other."

Brian denied he had a duty to provide an accounting or produce documents but states he had produced approximately 4,200 pages of financial records including bank statements, check registers, and receipts. The answer states, in pertinent part:

> During Bojilina's life, Petitioners did not make a demand for an accounting or file a petition under RCW 11.94.090 alleging that court intervention was necessary. Petitioners did inquire about the general status of Bojilina's money on occasion when they requested that Brian give them gifts from her accounts. Although Brian denies any duty to do so, he has provided Petitioners with copies of check registers, bank statements and other important financial and care information regarding Bojilina.

Brian and the Estate asserted a number of affirmative defenses including failure to state a claim upon which relief can be granted, the beneficiaries "have suffered no damages in that they have or will have received all assets to which they have a right as beneficiaries of the Estate of Bojilina Boatman," and the beneficiaries "lack standing to assert the claims set forth in its Petition." The Estate and Brian asserted a counterclaim for attorney fees and costs.

After retaining separate counsel, Brian filed an amended answer "in his individual capacity." The answer incorporates by reference the previously filed answer.

Brian filed a CR 12(b)(6) motion to dismiss the TEDRA petition for failure to state a claim upon which relief can be granted. Brian argued that as the attorney-in-fact, he only owed a duty to Bojilina. Brian argued the beneficiaries did not have standing to bring claims on behalf of the Estate for breach of fiduciary duty or conversion against him as the attorney-in-fact and any alleged conversion of funds while acting as the attorney-in-fact was barred by the statute of limitations.

> Petitioners are not the person or party whom any fiduciary duty was owed prior to Bojilina Boatman's death, and thus the establishment of her estate. Further, they are not representatives of the Estate. They are not the party in interest, they are not a representative of the party in interest,

> and have no standing to bring claims for breach of fiduciary duty or conversion prior to death.

The beneficiaries filed a response and declarations in opposition to the CR 12(b)(6) motion. The beneficiaries argued the financial records Brian produced showed he misappropriated $428,864.27. The beneficiaries also argued the court should remove Brian as the personal representative of the Estate because he breached his fiduciary duty to the Estate by failing to pursue a claim for conversion.

At the beginning of the hearing on the CR 12(b)(6) motion to dismiss, the parties agreed the court should treat the motion as a motion for summary judgment.[2] The court stated the threshold question was standing. The court requested supplemental briefing on whether the beneficiaries had standing to pursue the claims against Brian as attorney-in-fact for breach of fiduciary duty and conversion on behalf of the Estate.

> Just on that issue alone, I think we need to get through that and see. . . . Because if you're, if you get through the standing issue, then, yeah, you've got issues of fact everywhere, no question about that. I think [Brian's attorney] would agree with that.

In supplemental briefing, the beneficiaries argued they had standing to assert claims on behalf of the Estate against Brian while acting as the attorney-in-fact from 2007 until Bojilina died in 2013. The beneficiaries also requested removal of Brian as the personal representative of the Estate for breach of fiduciary duty. Specifically, "for failing to take actions necessary to recover Estate assets appropriated" by Brian while acting as the attorney-in-fact.

Brian argued that as a matter of law, any claim against him as the attorney-in-fact belonged to Bojilina, and that after her death, only the personal representative had the

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[2] Because the court considered material outside the pleadings, a CR 12(b)(6) motion to dismiss is treated as motion for summary judgment under CR 56. Sea-Pac Co. v. United Food & Commercial Workers Local Union 44, 103 Wn.2d 800, 802, 699 P.2d 217 (1985).

statutory right to bring an action on behalf of the Estate against Brain as the attorney-in-fact.

The court dismissed the TEDRA petition. The court ruled the beneficiaries did not have standing to bring a TEDRA action on behalf of the Estate against Brian as the attorney-in-fact. The court ruled, "Petitioners have no standing to bring any action for damages on behalf of the Estate. Any such cause of action belongs, as a matter of law, to the Court appointed Personal Representative."

The court denied the request to remove Brian as the personal representative. The court ruled, "Petitioners have not provided sufficient evidence to persuade this Court that Brian Boatman should be removed as the Personal Representative in this matter." The court dismissed the TEDRA petition for "Conversion, Breach of Fiduciary Duties, for an Accounting and Damages, and to Revoke Letters Testamentary."

The beneficiaries appeal. The Washington Academy of Elder Law Attorneys filed an amicus brief arguing the beneficiaries have standing under TEDRA. Brian filed a response brief. The Estate adopts the facts and arguments set forth in Brian's brief. The Estate filed a brief in response to the amicus. [3]

ANALYSIS

The beneficiaries challenge summary judgment dismissal of the TEDRA petition. The beneficiaries assert the court erred (1) in ruling they did not have standing to bring claims on behalf of the Estate to recover assets from Brian as the attorney-in-fact and

[3] In the reply brief, the beneficiaries move to strike the portions of the response brief that address the merits of the claims for breach of fiduciary duty and conversion. The beneficiaries argue the court did not reach the merits of the claims. Because the record establishes the court addressed only the threshold issue of standing, we do not consider the arguments on the merits. RAP 2.4(a).

(2) in denying their TEDRA petition to remove Brian as the personal representative of the Estate.

We review summary judgment dismissal de novo. Korslund v. DynCorp Tri-Cities Servs., Inc., 156 Wn.2d 168, 177, 125 P.3d 119 (2005). Under CR 56(c), summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Standing is a threshold issue that we also review de novo. In re Estate of Becker, 177 Wn.2d 242, 246, 298 P.3d 720 (2013). Where a party lacks standing, we refrain from reaching the merits of that claim. Org. to Preserve Agr. Lands v. Adams County, 128 Wn.2d 869, 896, 913 P.2d 793 (1996).

Whether the beneficiaries have standing under TEDRA to bring claims on behalf of the Estate against the attorney-in-fact is a question of statutory interpretation. We review questions of statutory interpretation de novo. In re Estate of Haviland, 177 Wn.2d 68, 75, 301 P.3d 31 (2013); In re Estate of Stover, 178 Wn. App. 550, 556, 315 P.3d 579 (2013).

When interpreting a statutory provision, our primary objective is to ascertain the intent of the legislature. Haviland, 177 Wn.2d at 75-76; Stover, 178 Wn. App. at 556. Where a statute is unambiguous, we give effect to the plain language of the statute as an expression of legislative intent. Haviland, 177 Wn.2d at 75-76; In re Estate of Jones, 152 Wn.2d 1, 11, 93 P.3d 147 (2004). We discern the plain meaning of a statutory provision based on the meaning of the language, the context of the statute, related provisions, and the statutory scheme as a whole. Stover, 178 Wn. App. at 556. An interpretation that reads language in isolation is too limited and fails to apply this rule.

Jongeward v. BNSF Ry., 174 Wn.2d 586, 595, 278 P.3d 157 (2012). We must "harmonize statutes pertaining to the subject matter and maintain the integrity of the statues within the overall statutory scheme." Philippides v. Bernard, 151 Wn.2d 376, 385, 88 P.3d 939 (2004); see also In re Estate of Evans, 181 Wn. App. 436, 442-48, 326 P.3d 755 (2014) (we must harmonize TEDRA with related statutes).

The beneficiaries rely on RCW 11.96A.080 to argue they have standing to bring claims on behalf of the Estate against Brian as the attorney-in-fact for breach of fiduciary duty and conversion.[4]

RCW 11.96A.080(1) states, in pertinent part, "[A]ny party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW 11.96A.030."

RCW 11.96A.030 states, "The definitions in this section apply throughout this chapter unless the context clearly requires otherwise." The definition of a "party" includes a beneficiary. RCW 11.96A.030(5) defines a "party" as "each of the following persons who has an interest in the subject of the particular proceeding . . . : (e) A beneficiary."

Although the definition of "matter" does not include the right of the beneficiaries to bring an action on behalf of the Estate, RCW 11.96A.030(2) broadly defines "matter." Former RCW 11.96A.030(2) states, in pertinent part:

> "Matter" includes any issue, question, or dispute involving:
> (a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, . . . nonprobate

[4] In addition to arguing the beneficiaries have standing under TEDRA, the Washington Academy of Elder Law Attorneys argue the beneficiaries have standing under the slayer statute, chapter 11.84 RCW. The definition of "matter" under TEDRA includes claims under the slayer statute. RCW 11.96A.030(2)(e). However, because this argument is raised for the first time on appeal, we granted the motion to strike this argument.

> asset, or with respect to any other asset or property interest passing at death;
>
> (b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity; [and]
>
> (c) The determination of any question arising in the administration of an estate . . . , or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: . . . (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee.[5]

The purpose of TEDRA is "to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW." RCW 11.96A.010. TEDRA makes clear that it does not supersede other provisions in Title 11 RCW. RCW 11.96A.080(2) expressly states that the provisions of TEDRA "shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter 11.20, 11.24, 11.28, 11.40, 11.42, or 11.56 RCW." See also In re Estate of Kordon, 157 Wn.2d 206, 212, 137 P.3d 16 (2006) (TEDRA does not supersede but instead shall supplement the other provisions of Title 11 RCW).

Under RCW 11.48.010, only the personal representative has the authority to "maintain and prosecute" actions on behalf of the estate. RCW 11.48.010 states, in pertinent part:

> The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

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[5] The legislature amended RCW 11.96A.030(2)(c) in 2015 to add subsection (vi) to include the determination of any question relating to "the powers and duties of a statutory trust advisor or directed trustee of a directed trust under chapter 11.98A RCW." LAWS OF 2015, ch. 115, § 1.

RCW 11.48.060 also expressly gives the personal representative the right to bring an action against an attorney-in-fact for conversion. RCW 11.48.060 states:

> If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he or she shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate.[6]

The cases the beneficiaries cite, Drain v. Wilson, 117 Wash. 34, 200 P. 581 (1921), and In re the Estate of Wheeler, 71 Wn.2d 789, 431 P.2d 608 (1967), are inapposite. Neither Drain nor Wheeler address whether beneficiaries have standing to bring an action on behalf of an estate against an attorney-in-fact. In Drain and Wheeler, the court held that when an action augments a fund for the benefit of the beneficiaries under a will, attorney fees are warranted. Drain, 117 Wash. at 37-39; Wheeler, 71 Wn.2d at 796-98; see also Seattle Sch. Dist. No. 1 v. State, 90 Wn.2d 476, 541-42, 585 P.2d 71 (1978).

The out-of-state cases relied on by the beneficiaries, Siegel v. Novak, 920 So.2d 89 (Fla. Dist. Ct. App. 2006), and Priestly v. Priestly, 949 S.W.2d 594 (Ky. 1997), interpret different statutory language and are inapposite. In Siegel, the Florida District Court of Appeals allowed beneficiaries of a revocable trust to pursue a claim against the trustee for improper distributions from the trust that occurred during the settlor's lifetime. Siegel, 920 So.2d at 96. In Priestly, the Kentucky Supreme Court interpreted a Kentucky statute to allow claims against the administrator of an estate for actions the administrator took before the decedent's death. Priestly, 949 S.W.2d at 597-98.

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[6] RCW 4.20.046(1) also provides that "[a]ll causes of action by a person . . . shall survive to the personal representative."

We hold that under the plain and unambiguous language of Title 11 RCW, only the personal representative has the authority to bring claims for breach of fiduciary duty and conversion on behalf of the Estate against Brian while acting as the attorney-in-fact. Accordingly, we affirm the determination that the beneficiaries do not have standing to bring claims against Brian for breach of fiduciary duty and conversion while acting as the attorney-in-fact.[7]

Next, the beneficiaries contend the court erred in denying their TEDRA petition to remove Brian as the personal representative of the Estate. The beneficiaries argue the conflict of interest between maximizing the Estate while trying to avoid personal liability "mandates Brian's removal as personal representative." Because the undisputed record establishes a conflict of interest, we hold the court erred in dismissing the request to remove Brian as the personal representative for purposes of investigating and determining whether to bring claims against Brian as the attorney-in-fact for breach of fiduciary duty and conversion.

The personal representative owes the beneficiary of an estate a fiduciary duty to act in the best interest of the estate. In re Estate of Larson, 103 Wn.2d 517, 520-21, 694 P.2d 1051 (1985). "[A]n estate beneficiary can protect his or her interest in the estate by having the personal representative removed if the personal representative breaches a fiduciary duty to the estate" under RCW 11.68.070 and 11.28.250. Trask v. Butler, 123 Wn.2d 835, 843-44, 872 P.2d 1080 (1994). RCW 11.68.070 provides, in

[7] Accordingly, the court did not err in ruling the beneficiaries did not have standing to demand discovery or an accounting. Nonetheless, as noted, Brian produced approximately 4,200 pages of financial records and an accounting.

pertinent part:

> If any personal representative who has been granted nonintervention powers fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of . . . any heir, devisee, [or] legatee, . . . such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, . . . and if . . . it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed.

RCW 11.28.250 provides:

> Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his or her charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided.

Consistent with the provisions in RCW 11.68.070 and 11.28.250, the plain and unambiguous language of the TEDRA statute gives a beneficiary standing to file a petition to remove the personal representative. Specifically, a "beneficiary" has standing to "have a judicial proceeding" to determine "any question arising in the administration of an estate," including questions relating to "a change of personal representative." RCW 11.96A.030(5)(e), .080(1), .030(2)(c)(ii).

Because the undisputed record establishes a conflict of interest, the court erred in dismissing the TEDRA petition to remove Brian as the personal representative for

purposes of investigating and determining whether to bring an action for breach of fiduciary duty and conversion on behalf of the Estate. On remand, the court shall appoint an interim personal representative to determine whether to pursue an action on behalf of the Estate against Brian as the attorney-in-fact for Bojilina from 2007 until her death in 2013. See Jones, 152 Wn.2d at 19.

We affirm in part, reverse in part, and remand.[8]

Schindler, J.

WE CONCUR:

Dwyer, J.

Appelwick, J.

[8] Both parties request attorney fees under RCW 11.96A.150(1) and RAP 18.1. We decline to award attorney fees.

NO. 80933-4-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Estate of Bojilina H. Boatman:

Non-Party BEVERLY YOUNG,

Appellant,

&

ESTATE OF BOJILINA H. BOATMAN,

Appellant/Cross-Appellant,

vs.

BRIAN BOATMAN, a single person, and
BRIAN BOATMAN, as the Trustee of the
Brian Boatman Revocable Living Trust,

Respondents/Cross-Appellants.

BRIEF OF APPELLANT NON-PARTY BEVERLY YOUNG

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I. Introduction

Appellant Beverly Young is not a party to this case. But the trial court issued a six-figure attorneys' fees award against her ("Fees Order").[1] This appeal concerns that erroneous Fees Order. The trial court had no authority or jurisdiction to impose it and otherwise abused its discretion by doing so. The trial court also erred by not vacating the void Fees Order as required by the court's non-discretionary duty under CR 60(b)(5).

This TEDRA[2] action began when all five of Brian Boatman's siblings sued him for breach of fiduciary duty and conversion of their mother's assets when Brian was acting as her attorney-in-fact. In response, Brian argued that his siblings did not have standing to pursue those claims – that instead they belonged solely to the Estate.[3] This Court agreed: the claims belonged to the Estate and thus only the Estate could sue Brian. Brian obtained dismissal of his siblings' claims on that basis. However, an estate can act only through a Personal Representative ("PR"), and here Brian was the Estate's PR. The Court held that the potential claims against him by the Estate created a clear conflict of interest: of

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[1] "Fees Order" means the Order on Entry of Judgments for Attorney Fees and Costs, dated December 20, 2019 (Case #81000-6-I, CP 956-961).

[2] "TEDRA" means the Trusts and Estate Dispute Resolution Act, RCW 11.96A, *et seq.*

[3] The "Estate" means the Estate of Bojilina Boatman.

course Brian would not cause the Estate to sue himself. Accordingly, this Court remanded with instructions that the trial court appoint an interim PR to determine whether the Estate should pursue claims against Brian.

Following remand, the trial court appointed a neutral third-party to act as PR and as an officer of the court to evaluate the claims, and issue a report and recommendation regarding whether the Estate should pursue them. That PR concluded the Estate should do so.

Thereafter, Ms. Young caught the "hot potato." She agreed to act as the Estate's PR and to do so without compensation. The Estate then asserted those claims against Brian. The Estate was and is the only Petitioner.

After a bench trial the court found in favor of Brian. Brian then sought an attorneys' fees award against all of his siblings for the proceedings ***after*** remand. The trial court correctly declined to find that the other siblings were parties against whom attorneys' fees could be awarded. However, the trial court erroneously conflated Ms. Young's service as the Estate's PR (by which she was simply the Estate's agent) with Ms. Young as an individual to award Brian over $100,000 in attorneys' fees and costs against Ms. Young personally.

The trial court had no authority or jurisdiction to enter the Fees Order against an individual who was not a party to the proceedings.

First, Washington follows the American Rule, under which no attorneys' fees may be awarded unless expressly authorized by an applicable statute, contract, or recognized ground in equity. Here, the TEDRA attorneys' fees statute (RCW 11.96A.150) only authorizes the imposition of an award against "a party to the proceedings," the estate, or and certain assets. Ms. Young is none of these. That Ms. Young acted in a representative capacity on behalf of the Estate does not somehow make her a party to the proceedings in her individual capacity.

Second, the Fees Order against Ms. Young violates due process. A person cannot be subject to a money judgment in litigation in which he or she is not a party. There is no basis to deviate from that law here.

Further, even if the trial court had the authority and jurisdiction to impose a fees award against Ms. Young (which it did not), the trial court abused its discretion by doing so. The trial court's Fees Order is precluded by both judicial estoppel and the law of the case. Brian had previously argued Ms. Young could not be a party and was not the real party in interest to obtain dismissal of claims Ms. Young and her siblings had asserted against Brian in the Initial TEDRA Action. Brian cannot now obtain a Fees Order against Ms. Young by arguing she is somehow a

"party" to the proceedings following remand (the Second TEDRA Action).[4]

It is also manifestly unreasonable to impose attorneys' fees and costs on Ms. Young for litigating claims on behalf of the Estate as its PR that a court-appointed, independent interim PR and officer of the court found were warranted and should be pursued. This is tantamount to a sanction against Ms. Young for executing her fiduciary duty as the Personal Representative.

Finally, the trial court erroneously denied Ms. Young's CR 60(b)(5) motion. The trial court had a nondiscretionary duty to vacate the void Fees Order. Instead, however, the court found that the "successor judge doctrine" barred it from granting the requested relief. That doctrine is inapposite and the trial court's ruling directly contradicts CR 63. Successor judges have the full authority to consider and rule upon post-trial motions. Transfer of this case to a new judge after trial did not somehow insulate the void Fees Order from review.

For each of these reasons the Court should vacate the Fees Order.

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[4] In its Fees Order, the trial court distinguished between the pre-remand and post-remand proceedings by referring to them as the "Initial TEDRA Action" and the "Second TEDRA Action", respectively, and so Ms. Young uses the same terms here. (Case #81000-6-I, CP 956-961.)

II. Assignments of Error

1. The trial court erred by entering the Order on Entry of Judgments for Attorney Fees and Costs, dated December 20, 2019, against Ms. Young (the Fees Order, Case #81000-6-I, CP 956-961) because it had no authority or jurisdiction to do so.

- The trial court lacked the authority to enter the Fees Order against Ms. Young under RCW 11.96A.150 because she was not "a party to the proceedings" at issue (the post-remand proceedings, referred to by the trial court as the "Second TEDRA Action").
- The Fees Order is a money judgement against someone who was not a party to the proceedings for which the fees were awarded and therefore violates constitutional due process protections.

2. Even if the trial court had the authority and jurisdiction to enter the Fees Order against Ms. Young, it abused its discretion by doing so. (Case #81000-6-I, CP 956-961.)

- Judicial estoppel barred Brian from obtaining an attorneys' fee award against Ms. Young because pre-remand, Brian obtained a dismissal of the siblings' claims by arguing Ms. Young and

the others had no standing and thus could not be parties to the proceedings to assert claims that belonged solely to the Estate.

- It is law of the case that Ms. Young cannot be a party to these proceedings in her individual capacity and this law of the case precludes the entry of a Fees Award against Ms. Young personally for the Second TEDRA Action.
- It was manifestly unreasonable to impose fees and costs against Ms. Young for acting as the court-appointed PR to have the Estate pursue claims that the Interim PR—a court-appointed officer of the court—recommended pursuing.

3. The trial court erred by denying Ms. Young's Motion to Vacate where the Fees Order was void because the trial court lacked the authority and jurisdiction to enter it. (Case #81000-6-I, CP 1031-1035.)

- The trial court had a non-discretionary duty to vacate the Fees Order as void under CR 60(b)(5).
- The trial court erred by holding the "successor judge" doctrine prevented it from vacating the Fees Order. The successor judge doctrine concerns issuing findings of fact when a different judge has heard the evidence; it has nothing to do with the power of a successor judge to vacate a void judgment or order.

4. The trial court erred by entering the Fees Order in the amounts that it did and as against any party for the reasons set forth in the Estate's brief on appeal. (Case #81000-6-I, CP 956-961.)

III. Statement of the Case

A. The Prior Proceedings ("Initial TEDRA Action")

This action began in 2013, when Ms. Young and four of her brothers (the "Siblings") filed suit against their brother Brian Boatman for conversion, breach of fiduciary duty, and an accounting. (Case #81000-6-I, CP 4-26.) They did so after discovering Brian had used his attorney-in-fact power over their ill mother's assets to take or spend hundreds of thousands of dollars of her money. (*Id.*) The Siblings also sought to remove Brian as the Personal Representative of her Estate. (*Id.*)

In response, Brian moved to dismiss the petition by arguing, among other things, that the Siblings "are not the party in interest, they are not representative of the party in interest, and have no standing to bring claims for breach of fiduciary duty or coversion prior to death". (Case #81000-6-I, CP 58:4-6); *see also* (Case #81000-6-I, CP 113:2.) Brian asserted that as a matter of law, any claim against him as the attorney-in-fact belonged to his mother (Bojilina Boatman) personally and that, after her death, only the personal representative of the Estate (him) had the statutory right to bring an action on behalf of the Estate against him.

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NO. 80933-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION ONE

IN RE: ESTATE OF BOJILINA H. BOATMAN;

Non-Party BEVERLY YOUNG,
Appellant,

and

ESTATE OF BOJILINA H. BOATMAN,
Appellant/Cross-Respondent

v.

BRIAN BOATMAN and BRIAN BOATMAN, as the Trustee of BRIAN BOATMAN REVOCABLE LIVING TRUST,
Respondents/Cross-Appellants

APPELLANT/CROSS-RESPONDENT ESTATE OF BOJILINA H. BOATMAN'S OPENING BRIEF

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I. INTRODUCTION

In the Phase I of this case, beneficiaries of the Estate of Bojilina H. Boatman (the "Estate"), Beverly Young ("Young"), Bradley Boatman ("Bradley"), Blake Boatman ("Blake"), William Boatman ("Bill') and Brent Boatman ("Brent", the "Siblings", collectively), filed a TEDRA petition seeking recovery from Brian Boatman ("Brian") for substantial assets transferred from his Mother, Bojilina Boatman ("Bojilina"), to Brian or for his benefit while serving as her attorney-in-fact ("AIF"). Because Brian was then also the appointed Estate Personal Representative ("PR"), the Siblings asserted their claims for breach of fiduciary duty and conversion against Brian as the Estate PR and in his individual capacity, as well as seeking Brian's removal as the PR.

Following the dismissal of the Siblings' claims by then presiding Superior Court Judge Rickert, the siblings appealed assigning as error the trial court's dismissal based upon the Siblings' lack of standing, as well as their petition to remove Brian as the Estate PR. In that previous decision (the "COA Opinion"), this Court affirmed the dismissal of the Siblings as proper parties in this case for lack of standing, but reversed dismissal of the Siblings' petition to remove Brian as the Estate's PR, mandating that the trial

court appoint an interim personal representative to determine if the Estate should pursue a claim against Brian for breach of fiduciary duty and conversion while he served as Bojilina's AIF.

Following remand, the court appointed interim personal representative then issued a report (the "IPR Report") concluding that a claim on behalf of the Estate against Bojilina's AIF was warranted. Based upon this directive, the Superior Court appointed Young as the successor PR, and consistent with the mandate of this Court, the Estate pursued precisely those claims against Brian, while Young served as the Estate's successor PR.

After a three-week trial at which the Estate presented substantial evidence that Brian appropriated in excess of $500,000 from Bojilina while serving as her AIF, Judge Montoya-Lewis denied the Estate's claims. Although the Estate disagrees with many of the findings and conclusion made by the trial court in support of that ruling, for practical and financial reasons, it is limiting this appeal to addressing the subsequent award of attorneys' fees and costs against the Estate.

Among other deficiencies, the background giving rise to the Estate's assertion of its claims against Brian in the post-remand Phase II of the case rendered any award of fees against the Estate

under RCW 11.96A.150 inappropriate. Indeed, in fulfillment of this Court's mandate and consistent with the IPR's recommendation, the trial court appointed Young as the successor PR for the purpose of pursuing breach of fiduciary duty and conversion claims against Brian. In fulfillment of her resulting fiduciary duty, the PR pursued those claims on behalf of the Estate. The subsequent award of fees against the Estate, accordingly, should be reversed because it perversely punished the Estate for pursuing the very recovery it was mandated to, and the PR was under a fiduciary to duty to, seek.

Reversal is also supported by the well-settled principle that attorneys' fee should not be award under RCW 11.96A.150 in cases raising novel matters. This court's prior ruling that the Siblings lacked standing to assert claims on behalf of the Estate against Brian was a matter of first impression in Washington. In turn, that gave rise to the unique circumstances under which Young was appointed as the successor PR to pursue Phase II claims on behalf of the Estate against Brian. As developed more fully below, the novel matter doctrine provides an additional basis for reversing the trial court's award of fee.

Moreover, the trial court's award of costs in an amount exceeding $13,000 dramatically exceeded allowable costs under RCW 4.84.010. As established below, proper application of statutory and case law requires the reduction of the cost award to $453.96.

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

A. Assignments of Error

1. The trial court erred in awarding attorneys' fees in favor of Brian and against the Estate under RCW 11.96A.150 through Findings 03, 04, 13, 14, 15, and 16 and Order Paragraph 04 of the Findings/Conclusions and Order re: Award of Attorneys' Fees and Costs (the "December 20 Order') (CP at 1634-1639).

2. The trial court erred in awarding costs in the amount of $450 arising out of Phase I of the case and $12,835 in connection with Phase II against the Personal Representative of the Estate and the Estate through Findings 12 and 13 and Order Paragraphs 01 and 03 of the December 20 Order (CP at 1634-1639).

3. The trial court erred in awarding attorneys' fees in favor of Brian and against "the Estate of Bojilina Boatman and Beverly Young in her capacity as the Personal Representative"

through Finding/Conclusion 5 and Order Paragraph 3 of the Findings/Conclusions and Order re: Award of Attorneys' Fees and Cost (the "January 22 Order") (CP at 1714-1717).

4. The trial court erred in awarding costs in the amount of $13,035.97 in favor of Brian and against "the Estate and Beverly Young in her capacity as the Personal Representative" through Finding/Conclusion 6 and Order Paragraph 4 of the January 22 Order (CP 1714-1717).

B. Issues Presented

1. Should attorneys' fees be awarded against an estate and its personal representative under RCW 11.96A.150 for prosecuting claims that the personal representative was specifically appointed to pursue as the result of this Court's previous mandate and the follow-up directive issued by the court appointed IPR? (Assignments of Errors 1 and 3)

2. Did the trial court have the authority to award costs under RCW 4.84.010 *et seq.* to a party for: 1) expenses incurred in procuring copies of deposition not taken by that party; 2) deposition transcription expenses for portions of the deposition not used at trial; 3) fees and expenses paid as expert witness fees; 4) trial transcription fees; 5) paying of a second, unnecessary,

CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **PETITION FOR REVIEW** on the 2nd day of July 2021 as follows:

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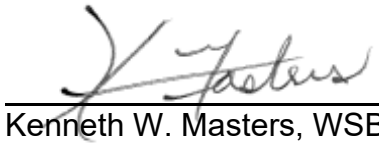

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